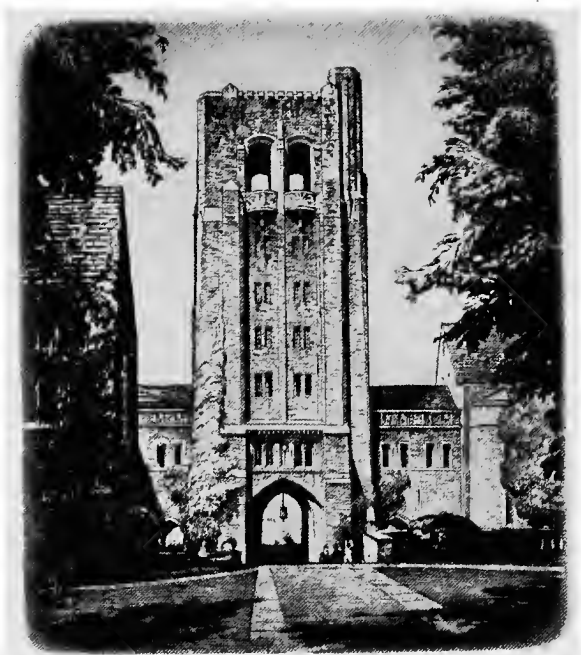


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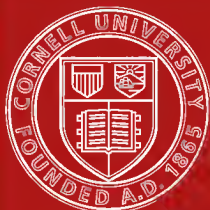
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THE

NATIONAL BANK ACT,

AND ITS

JUDICIAL MEANING,

WITH AN APPENDIX,

CONTAINING OFFICIAL INSTRUCTIONS AND RULES RELATING TO THE FORMATION AND
MANAGEMENT OF NATIONAL BANKS, UNITED STATES BONDS, AND THE
ISSUE AND REDEMPTION OF COINS AND CURRENCY.

BY

dwey
ALBERT S. BOLLES,

EDITOR OF "THE BANKER'S MAGAZINE;" AND AUTHOR OF "BANKS
AND THEIR DEPOSITORS."

NEW YORK:

HOMANS PUBLISHING COMPANY, 251 BROADWAY.

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TO
GEN. FRANCIS A. WALKER,
PRESIDENT OF THE MASSACHUSETTS INSTITUTE OF TECHNOLOGY,
WHOSE WIDELY KNOWN ECONOMIC WRITINGS
ARE AS HIGHLY VALUED
FOR THEIR JUDICIAL TEMPER
AS FOR
THEIR EXTENSIVE LEARNING.



PREFATORY NOTE.

A few words of explanation may be added concerning the plan of this book. The side notes refer to the statutes; and the headings in the text to their construction. The punctuation of the statutes has been literally followed as well as their wording. Statutes re-appear in a few subjects of which they form an important part.



ERRATA.

Page 11, seventh line from bottom, read *into* for "with."

" 28, last line, read *professed* for "proposed."

" 36, tenth line from top, read *is* for "it."

" 36, fifth line from bottom, insert *it* after "but."

" 76, eighth line from top, read *M* for "W."

" 176, eleventh line from bottom, insert " before "word."

The other typographical errors are so obvious that they need not be mentioned.

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 v. Ragsdale, 263.
Wild, *In re*, 141, 151.
Wilder *v.* Union National Bank, 167.
Wiley *v.* First National Bank, 40.
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THE NATIONAL BANK ACT

AND ITS JUDICIAL MEANING.

CHAPTER I.

POWERS OF THE COMPTROLLER.

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| <p>§ 1. Bureau of national currency.
 2. Cannot submit to jurisdiction of court.
 3. Cannot be sued by assignee.
 4. Appointment and term of office.
 5. Oath and bond.
 6. Deputy Comptroller.</p> | <p>§ 7. Clerks.
 8. Must not be interested in national banks.
 9. Seal.
 10. Rooms, etc., for Bureau.
 11. Annual report.
 12. When it may be printed.</p> |
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§ 1. "There shall be in the Department of the Treasury a Bureau charged with the execution of all laws passed by Congress relating to the issue and regulation of a national currency secured by United States bonds; the chief officer of which Bureau shall be called the Comptroller of the Currency, and shall perform his duties under the general direction of the Secretary of the Treasury."¹

Bureau of
national
currency.
Rev. Stat.
Sec. 324.

§ 2. **Cannot submit to jurisdiction of a court.** But he can neither submit himself nor the United States to the jurisdiction of a court. Says Judge Miller: "It may very well admit

¹ Act 1864, Sec. 1. The original national banking law was approved Feb. 25, 1863, and was entitled "An act to provide a national currency, secured by a pledge of United States stocks, and to provide for the circulation and redemption thereof." The next year the act was thoroughly revised, and re-enacted, and was approved on the 3d day of June. This act was embodied

of doubt whether it is within his competency, to submit himself, in the exercise of duties specially confided to him by acts of Congress to the control of the courts, and especially of those which can assert no such jurisdiction by reason of their territorial limits. * * We have no hesitation in holding that however he may submit himself to the jurisdiction of those courts, and consent to be governed in his official action by their decrees, so far as they affect rights of parties who may come into court and be impleaded in the same suit, he has no authority to submit the United States to such jurisdiction, and to submit the rights of the government to litigation in any court, without some provision of law authorizing him to do so."¹

§ 3. **Cannot be sued by assignee.** A private person has no right as assignee of the bonds of a national bank, which have been deposited with the United States Treasurer to secure its circulation, to call him and the Comptroller to account before a federal court for their official conduct concerning them, nor has a court the right to summon either of these persons to answer such an action.²

Appoint-
ment and
term of
office.
Rev. Stat.
Sec. 325.

§ 4. "The Comptroller of the Currency shall be appointed by the President, on the recommendation of the Secretary of the Treasury, by and with the advice and consent of the Senate, and shall hold his office for the term of five years, unless sooner removed by the President, upon reasons to be communicated by him to the Senate; and he shall be entitled to a salary of five thousand dollars a year."³

Oath and
bond.
Rev. Stat.
Sec. 326.

§ 5. "The Comptroller of Currency shall, within fifteen days from the time of notice of his appointment, take and subscribe the oath of office; and he shall give to the United States a bond in the penalty of one hundred thousand dollars, with not less than two responsible sureties, to be approved by the Secretary of the Treasury, conditioned for the faithful discharge of the duties of his office."⁴

§ 6. "There shall be in the Bureau of the Comptroller of

in the sixty-second Title of the Revised Statutes which contained all the national statutes that were in force on Dec. 1, 1873. On the 20th of June, 1874, Congress declared that the act "shall hereafter be known as the 'National Bank Act,'" 17 Stat. at Large, 43 C. 1 S. Ch. 343, Sec. 1.

¹ Case v. Terrell, 11 Wall., 199 p. 202.

² Van Antwerp v. Hulburd, 7 Blatchf., 426, and 8 Id., 282.

³ Act, 1864, Sec. 1.

⁴ Id.

the Currency a Deputy Comptroller of the Currency, to be appointed by the Secretary, who shall be entitled to a salary of two thousand five hundred dollars a year, and who shall possess the power and perform the duties attached by law to the office of Comptroller during a vacancy in the office or during the absence or inability of the Comptroller. The Deputy Comptroller shall also take the oath of office prescribed by the Constitution and laws of the United States, and shall give a like bond in the penalty of fifty thousand dollars.”¹

Deputy
Comptroller.
Rev. Stat.
Sec. 327.

§ 7. “The Comptroller of the Currency shall employ, from time to time, the necessary clerks, to be appointed and classified by the Secretary of the Treasury, to discharge such duties as the Comptroller shall direct.”²

Clerks.
Rev. Stat.
Sec. 328.

§ 8. “It shall not be lawful for the Comptroller or the Deputy Comptroller of the Currency, either directly or indirectly, to be interested in any association issuing national currency under the laws of the United States.”³

Interest in
national
banks.
Rev. Stat.
Sec. 329.

§ 9. “The seal devised by the Comptroller of the Currency for his office, and approved by the Secretary of the Treasury, shall continue to be the seal of office of the Comptroller, and may be renewed when necessary.”⁴ “A description of the seal, with an impression thereof, and a certificate of approval of the Secretary of the Treasury, shall be filed in the office of the Secretary of State.”⁵

Seal.
Rev. Stat.
Sec. 330.

§ 10. “There shall be assigned from time to time, to the Comptroller of the Currency, by the Secretary of the Treasury, suitable rooms in the Treasury building for conducting the business of the Currency Bureau, containing safe and secure fire-proof vaults, in which the Comptroller shall deposit and safely keep all the plates not necessarily in the possession of engravers or printers, and other valuable things belonging to his Department; and the Comptroller shall from time to time furnish the necessary furniture, stationery, fuel, lights, and other proper conveniences for the transaction of the business of his office.”⁶

Rooms.
Rev. Stat.
Sec. 331.

§ 11. “The Comptroller of the Currency shall make an annual report to Congress, [at the commencement of its session,⁷] exhibiting:

¹ Act 1864, Sec. 1. ² Id. ³ Id. ⁴ Act 1864, Sec. 2.

⁵ Act Feb. 18, 1875, 18 Stat. at Large, 43 C. 2 S. Ch. 80. ⁶ Act 1864, Sec. 3.

⁷ The bracketed additions are an amendment, Act Feb. 18, 1875, 18 Stat. at Large, 43 C. 2 S. Ch. 80.

Annual re-
port.
Rev. Stat.
Sec. 333.

First. A summary of the state and condition of every association from which reports have been received the preceding year, at the several dates to which such reports refer, with an abstract of the whole amount of banking capital returned by them, of the whole amount of their debts and liabilities, the amount of circulating notes outstanding, and the total amount of means and resources, specifying the amount of lawful money held by them at the times of their several returns, and such other information in relation to such associations as, in his judgment, may be useful.

Second. A statement of the associations whose business has been closed during the year, with the amount of their circulation redeemed and the amount outstanding.

Third. Any amendment to the laws relative to banking by which the system may be improved, and the security of the holders of its notes and other creditors may be increased.

Fourth. A statement exhibiting under appropriate heads the resources and liabilities and condition of the banks, banking companies, and saving-banks organized under the laws of the several states and territories; such information to be obtained by the Comptroller from the reports made by such banks, banking companies, and savings-banks to the legislatures or officers of the different states and territories, and, where such reports can not be obtained, the deficiency to be supplied from such other authentic sources as may be available.

Fifth. The names and compensation of the clerks employed by him, and the whole amount of the expenses of the banking department during the year."¹

Printing of
it.
Rev. Stat.
Sec. 3311.

§ 12. "When the annual report of the [Comptroller of the Currency] upon the national banks [and banks under state and territorial laws²] is completed, or while it is in process of completion, if thereby the business may be sooner dispatched, the work of printing shall be commenced, under the superintendence of the Secretary, and the whole shall be printed and ready for delivery on or before the first day of December next after the close of the year to which the report relates."³

¹ Act 1864, Sec. 61 : Act Feb. 19, 1873, 42 C. 3 S. 17, Stat. at Large, Ch. 166.

² The bracketed additions are amendments, Act Feb. 18, 1875.

³ Act Jan. 30, 1863, 12 Stat. at Large, 37 C. 1 S. Ch. 14.

CHAPTER II.

ORGANIZATION, CONVERSION, AND BEGINNING OF NATIONAL BANKING ASSOCIATIONS.

Organization.

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| § 13. Who may form a national bank.
14. What its certificate shall specify.
15. How acknowledged.
16. Minimum capital.
17. Transfer of shares; rights and liabilities of shareholders. | § 18. Payment of stock.
19. Proceedings when shareholder fails to pay installment.
20. Organization of gold note banks. |
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Conversion of State Banks.

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| § 21. State bank may become national.
22. Utility of the statute.
23. Legal relations not changed by conversion.
24. Its right to sue.
25. Its liability for debts of state bank.
26. Bequest of stock in converted bank.
27. Operation of enabling laws.
28. Action by two-thirds of stockholders, but not all.
29. New stock book. | § 30. Consent of married woman to conversion.
31. Qualification of directors in converted bank.
32. Regularity of conversion.
33. Right to share in surplus of converted bank.
34. Conversion of state bank with branches.
35. Rights of bank converted under Act of 1863.
36. Conversion by savings bank. |
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Preliminary Examination, Beginning, Location, and Payment of Deficiency in Stock.

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| § 37. Preliminary examination by Comptroller.
38. Authority to begin.
39. Publication of order to begin. | § 40. Place of business.
41. Enforcement of payment of deficiency in stock. |
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§ 13. "Associations for carrying on the business of banking under this Title may be formed by any number of natural persons, not less in any case than five. They shall enter into articles of association, which shall specify in general terms the object for which the association is formed, and may contain any other provi-

Who may form national bank. Rev. Stat. Sec. 5133.

sions, not inconsistent with law, which the association may see fit to adopt for the regulation of its business and the conduct of its affairs. These articles shall be signed by the persons uniting to form the association, and a copy of them shall be forwarded to the Comptroller of the Currency, to be filed and preserved in his office." ¹

What their
certificates
shall specify.
Rev. Stat.
Sec. 5134.

§ 14. "The persons uniting to form such an association shall, under their hands, make an organization certificate, which shall specifically state—

"*First.* The name assumed by such association; which name shall be subject to the approval of the Comptroller of the Currency.

"*Second.* The place where its operations of discount and deposit are to be carried on, designating the state, territory, or district, and the particular county and city, town, or village.

"*Third.* The amount of capital stock and the number of shares into which the same is to be divided.

"*Fourth.* The names and places of residence of the shareholders, and the number of shares held by each of them.

"*Fifth.* The fact that the certificate is made to enable such persons to avail themselves of the advantages of this Title." ²

How ac-
knowledgeed.
Rev. Stat.
Sec. 5135.

§ 15. "The organization certificate shall be acknowledged before a judge of some court of record, or notary public; and shall be, together with the acknowledgment thereof, authenticated by the seal of such court, or notary, transmitted to the Comptroller of the Currency, who shall record and carefully preserve the same in his office." ³

Minimum
capital.
Rev. Stat.
Sec. 5138.

§ 16. "No association shall be organized under this Title with a less capital than one hundred thousand dollars; except that banks with a capital of not less than fifty thousand dollars may, with the approval of the Secretary of the Treasury, be organized in any place the population of which does not exceed six thousand inhabitants. No association shall be organized in a city the population of which exceeds fifty thousand persons with a less capital than two hundred thousand dollars." ⁴

Transfers of
shares,
rights and

§ 17. "The capital stock of each association shall be divided into shares of one hundred dollars each, and be deemed personal property, and transferable on the books of the association in such

¹ Act 1864, Sec. 5

² Act 1864, Sec. 6.

³ Id.

⁴ Act 1864, Sec. 7.

manner as may be prescribed in the by-laws or articles of association. Every person becoming a shareholder by such transfer shall, in proportion to his shares, succeed to all the rights and liabilities of the prior holder of such shares; and no change shall be made in the articles of association by which the rights, remedies, or security of the existing creditors of the association shall be impaired."¹

Liabilities of
shareholders
Rev. Stat.
Sec. 5139.

§ 18. "At least fifty per centum of the capital stock of every association shall be paid in before it shall be authorized to commence business; and the remainder of the capital stock of such association shall be paid in installments of at least ten per centum each, on the whole amount of the capital, as frequently as one installment at the end of each succeeding month from the time it shall be authorized by the Comptroller of the Currency to commence business; and the payment of each installment shall be certified to the Comptroller, under oath, by the president or cashier of the association."²

Payment of
stock.
Rev. Stat.
Sec. 5140.

§ 19. "Whenever any shareholder, or his assignee, fails to pay any installment on the stock when the same is required by the preceding section to be paid, the directors of such association may sell the stock of such delinquent shareholder at public auction, having given three weeks' previous notice thereof in a newspaper published and of general circulation in the city or county where the association is located, or if no newspaper is published in said city or county, then in a newspaper published nearest thereto, to any person who will pay the highest price therefor, to be not less than the amount then due thereon, with the expenses of advertisement and sale; and the excess, if any, shall be paid to the delinquent shareholder. If no bidder can be found who will pay for such stock the amount due thereon to the association, and the cost of advertisement and sale, the amount previously paid shall be forfeited to the association, and such stock shall be sold as the directors may order, within six months from the time of such forfeiture, and if not sold it shall be canceled and deducted from the capital stock of the association. If any such cancellation and reduction shall reduce the capital of the association below the minimum of capital required by law, the capital stock shall, within

Proceedings
when share-
holder fails
to pay in-
stallments.
Rev. Stat.
Sec. 5141.

¹ Rev. Stat., Sec. 5139. This subject will be fully considered in the Eighth Chapter.

² Act 1864, Sec. 14.

thirty days from the date of such cancellation, be increased to the required amount; in default of which a receiver may be appointed, according to the provisions of section fifty-two hundred and thirty-four, to close up the business of the association."¹

Organization
of gold note
banks.
Rev. Stat.
Sec. 5185.

§ 20. In 1870 the Congress enacted that "associations may be organized in the manner prescribed by this Title for the purpose of issuing notes payable in gold; and upon the deposit of any United States bonds bearing interest payable in gold with the Treasurer of the United States, in the manner prescribed for other associations, it shall be lawful for the Comptroller of the Currency to issue to the association making the deposit circulating notes of different denominations, but none of them of less than five dollars, and not exceeding in amount eighty per centum of the par value of the bonds deposited, which shall express the promise of the association to pay them, upon presentation at the office at which they are issued, in gold coin of the United States, and shall be so redeemable. But no such association shall have a circulation of more than one million of dollars."²

Five years afterward the last sentence of this section was repealed.³ In 1880 Congress, further enacted "that any national gold bank organized under the provisions of the laws of the United States, may, in the manner and subject to the provisions prescribed by section fifty-one hundred and fifty-four of the Revised Statutes of the United States, for the conversion of banks incorporated under the laws of any State, cease to be a gold bank, and become such an association as is authorized by section fifty-one hundred and thirty-three, for carrying on the business of banking, and shall have the same powers and privileges, and shall be subject to the same duties, responsibilities, and rules, in all respects, as are by law prescribed for such associations: *Provided*, That all certificates of organization which shall be issued under this act shall bear the date of the original organization of each bank respectively as a gold bank."

¹ Act 1864, Sec. 15.

² Act July 12, 1870, 16 Stat at Large, 41 C. 2 S. Ch. 252, Sec. 3.

³ Jan. 19, 1875, 18 Stat. at Large, 43 C. 2 S. Ch. 19. The language of the repealing act was "that so much of section five thousand one hundred and eighty-five of the Revised Statutes of the United States as limits the circulation of banking associations, organized for the purpose of issuing notes payable in gold, severally to one million dollars, be, and the same is hereby, repealed; and each of such existing banking associations may increase its circulating notes, and new banking associations may be organized, in accordance with existing law, without respect to such limitation."

⁴ Act Feb. 14, Public Laws, 46 C. 2 S. Ch. 25.

§ 21. "Any bank incorporated by special law, or any banking institution organized under a general law of any state, may become a national association under this Title by the name prescribed in its organization certificate; and in such case the articles of association and the organization certificate may be executed by a majority of the directors of the bank or banking institution; and the certificate shall declare that the owners of two-thirds of the capital stock have authorized the directors to make such certificate, and to change and convert the bank or banking institution into a national association. A majority of the directors, after executing the articles of association and organization certificate, shall have power to execute all other papers, and to do whatever may be required to make its organization perfect and complete as a national association. The shares of any such bank may continue to be for the same amount each as they were before the conversion, and the directors may continue to be the directors of the association until others are elected or appointed in accordance with the provisions of this chapter; and any state bank which is a stockholder in any other bank, by authority of state laws, may continue to hold its stock, although either bank, or both, may be organized under and have accepted the provisions of this Title. When the Comptroller of the Currency has given to such association a certificate, under his hand and official seal, that the provisions of this Title have been complied with, and that it is authorized to commence the business of banking, the association shall have the same powers and privileges, and shall be subject to the same duties, responsibilities, and rules, in all respects, as are prescribed for other associations originally organized as national banking associations, and shall be held and regarded as such an association. But no such association shall have a less capital than the amount prescribed for associations organized under this Title."¹

State banks
may become
national.
Rev. Stat.
Sec. 5154.

§ 22. **Utility of the statute.** Though most of the state banks which became national associations changed within a short period after the enacting of the law of 1864, the meaning of this section is worth giving partly as legal history and partly to render our work more complete.

§ 23. **No legal relations were changed by the conversion.** "The transition did not disturb the relation of either the stockholders or officers of the corporation, nor did it enlarge or

¹ Act 1864, Sec. 44.

diminish the assets of the institution. These all remained the same under the national, as they were under the state organization. The bank neither lost any of its assets nor escaped any of its liabilities by the change. The change was a transition, and not a new creation.”¹ Says Judge Endicott: “On the execution of the necessary papers and on the approval by the proper officers, the directors of the state bank became the directors of the national bank, the capital stock and the stockholders of the old bank became the stock and stockholders of the new, together with the right to all the property, not specially excepted, and the obligation to pay all indebtedness not otherwise provided for. No other assignment was necessary to pass the personal property; the completion of the conversion contemplated by the statutes carried with it the assignment and transfer of all personal property and the rights of action, and the consequent liability to pay debts.”²

With greater fullness Judge Rapallo³ has described the nature of the conversion. “The general scheme of the National Banking Act is that state banks may avail themselves of its privileges and subject themselves to its liabilities without abandoning their corporate existence, without any change in the organization, officers, stockholders or property, and without interruption of their pending business or contracts. All property and rights which they held before organizing as national banks are continued to be vested in them under their new status. Great inconveniences might result if this saving of their existing assets did not include pending executory contracts, and pending guarantees, as well as vested rights of property. Although, in form, their property and rights as state banks, purport to be transferred to them in their new status of national banks, yet in substance there is no actual transfer from one body to another, but a continuation of the same body, under a changed jurisdiction. As between it and those who have contracted with it, it retains its identity, notwithstanding its acceptance of the privilege of organizing under the National Banking Act.”³

§ 24. A bank can sue to recover loans made before and after conversion. Consequently, a bank which held, as

¹ Currier, J., *Coffey v. National Bank*, 46 Mo., 140 p. 143:

² *Atlantic National Bank v. Harris*, 118 Mass., p. 151; *New York Grocers' National Bank v. Clark*, 32 How. Pr., 160; *Thorp v. Wegefarth*, 56 Pa., 82; *Kelsey v. National Bank*, 69 Pa., 426.

³ *City National Bank v. Phelps*, 97 N. Y., p. 50.

a state banking association, a continued guaranty for loans, on the strength of which it made loans both before, and after its conversion into a national banking institution, could maintain an action as a national bank against the guarantor on all of them.¹ In another case a state bank paid money to its president on his representation that he had paid the amount to an agent to whom the bank was indebted. After its conversion the agent sued the bank and recovered. The court held that it could maintain an action in its national name against the president for the money.²

§ 25. **And is liable for debts of state bank.** And if a debtor of the state bank should be a creditor of the national bank by owning its notes of circulation, he could compel the new bank to receive them in payment. Nor would the insolvency of the state bank impair his right to use them in this manner.³ But if a national bank should obtain judgment against such a debtor he could not then purchase the notes of the state bank and set them off against the judgment.* So, too, if a state bank should offer a reward for the discovery and recovery of stolen money and change into a national bank, it would be liable therefor.⁵

§ 26. **A bequest of bank stock not affected by its conversion.** As the conversion was not an annihilation or a dissolution of the state bank, a bequest of the dividends on the stock of a bank to the testator's sister, for example, and in the event of the paying off and refunding of the stock itself "by the expiration of the charter or from any other cause whatsoever," a bequest that the amount should be paid to her, would vest the stock in the residuary legatee after her death, though the bank should have been converted with a national one. Her representative would have no claim to the stock on the ground that after the conversion she was entitled to the amount of it.⁶

§ 27. **Operation of enabling laws.** Many of the states passed enabling acts for those banks which desired to become national associations; though they could be legally established without state action.⁷ In Massachusetts the act continued the state

¹ *City National Bank v. Phelps*, 97 N. Y., 44, affg. 16 Hun, 158. First trial, 86 N. Y., 484. ² *Atlantic National Bank v. Harris*, 118 Mass., 147.

³ *Thorp v. Wegefarrth*, 56 Pa., 82.

⁴ *Id.*

⁵ *Kelsey v. National Bank*, 69 Pa., 426. See §§ 75, 77.

⁶ *Maynard v. Bank*, 7 Phila., 6.

⁷ *Stetson v. City of Bangor*, 56 Me., 274; *Flint v. Board of Aldermen*, 99 Mass., 141.

bank as a body corporate for three years after the conversion for certain purposes. "By continuing the existence of banks, thus converted, as bodies corporate, the commonwealth was enabled to regulate those matters peculiarly within its province to provide for, as appears by the numerous statutes subsequently passed in relation to the redemption, circulation and taxation of bank bills."¹ Nor did any conflict arise in consequence of enacting statutes by a state authorizing its banks to become converted, and providing for the termination of their charters, and the continuing of their corporate names for the purpose of protecting and defending suits instituted by or against them, and of enabling them to close their affairs, but not for the purpose of continuing their business under the laws of the state.² In one state banks were required by charter to pay a tax or bonus to the state on their paid capital. A statute authorized them to reorganize as national banks provided the bonus was paid as before. It was decided that a state bank could surrender its charter, and by so doing be discharged from paying the bonus; and if it reorganized as a national bank the state could not re-impose the tax.³

§ 28. **Action by two-thirds, but not all of the stockholders.** Whenever the owners of more than two-thirds of the stock of a bank consented to the conversion, this could be done without the consent of the rest.⁴ And whenever a national bank was organized as the successor of a state bank with the concurrence of more than two-thirds of the stockholders, it could own the assets of its predecessor although in form it was organized as a new bank and the assets were transferred by sale and purchase. Thus, the First National Bank of Warren, Ohio, was organized by the stockholders of the Western Reserve Bank of that place, and actually succeeded that bank in its location, business and assets. Among these were judgments and decrees in favor of the bank. It was contended that the new bank had not succeeded to them. But whether a bank becomes the successor in the mode provided by the law, or by organizing anew, judgments and decrees may be taken and held.⁵

¹ Endicott, J., *Atlantic National Bank v. Harris*, 118 Mass., p. 151.

² *Thomas v. Farmers' Bank*, 46 Md., 43.

³ *State v. National Bank*, 33 Md., 75.

⁴ *Keyser v. Hitz*, 2 Mackey, 473.

⁵ *Bank v. McIntire*, 40 Ohio, 528.

§ 29. New stock book better, but not required. While it would be more regular when converting a bank into a national banking association to open a new stock book and issue new certificates in the name of the national bank, "there is however," says Cox, J., "nothing in the law prescribing the form of the stock book or of the certificates of stock, and we see nothing to prevent the new bank from treating the old books, and certificates as sufficient evidence of title in the new concern. Neither the rights nor liabilities of the stockholders could be effected by the mere omission to issue a new form of stock certificate to them. To hold otherwise would be to allow all the stockholders to escape liability by the mere omission of the formality of issuing the shares in a new form."¹

§ 30. Can a married woman consent to the conversion. The question has arisen concerning the ability of a married woman to consent to the conversion. Although the legal metamorphosis of a bank might be complete, would such a person be a stockholder in the new concern? If not consenting, it would be difficult, said the court in *Keyser v. Hitz*,² to make such a person a member in the new concern.

§ 31. Who are qualified directors in the converted bank. The section provides that the directors in the state bank may continue in that capacity until others are elected. In December, 1864, the American Bank of Providence elected twelve directors, two of whom never served. In May, the next year, the stockholders signed an agreement authorizing their directors, or a majority, to convert the bank into a national one, and appointed twelve directors for the national bank. In June, the bank was converted, and the articles of association which were signed by the ten acting directors provided that the board should consist of twelve and be elected annually in January. The bank was fully organized in August of that year and the first election was held the following January. In the interim between the conversion and the annual election, the ten acting directors of the state bank took the oath required of directors, but the other two did not. The question that afterward arose was, were the two persons who were elected in December, 1864, directors of the national bank? Said Durfee, J.: "The non-acting directors were elected

¹ *Keyser v. Hitz*, 2 Mackey, p. 490.

² 2 *Id.*, p. 491.

with the other directors by the bank when a State bank. No subsequent qualification was required of them. They never signified their non-acceptance. The other directors never elected others to fill their places at the board. For anything we can see, they might have acted as directors at any time before the conversion, if they had chosen. Where no qualification is required and there is no usage to control, we think a person who is elected a bank director may be presumed to accept, unless he declines. This presumption may doubtless be rebutted, and perhaps simple non-action for five months would be sufficient to rebut it in some cases. But in this case the stockholders who authorized the conversion recognized the non-acting directors as directors at the time of the conversion. They name them, in the instrument authorizing the conversion, with the other ten as those who are now the directors of said American Bank." The instrument may be invalid in so far as it was intended to operate as a re-appointment, but considered as a recognition of the status of the non-acting directors, it is none the less significant. We think we ought not to find for the benefit of the bank that there were only ten directors previous to its conversion because of the simple non-action of these two, when the stockholders authorizing the conversion recognized these two with the other ten at the time they authorized the same."¹

§ 32. Regularity of conversion. With respect to the regularity of the conversion the certificate of the Comptroller is conclusive.²

§ 33. Right of state bank stockholders to share in the surplus. In many cases some of the stockholders of the state banks did not desire, or were disqualified to be stockholders in the national association. In Connecticut at least two cases of this kind happened. The state itself was a stockholder in the banks. In one of them it had no right to enter the new organization, in the other case its right to enter was at first assumed, but afterward denied. In both the banks sought to retain the state's share of the surplus capital which had been accumulated by the old organizations, but did not succeed.³

§ 34. "It shall be lawful for any bank or banking association,

State banks
with
branches.
Rev. Stat.
Sec. 5155.

¹ Lockwood v. Mechanics' National Bank, 9 R. I. 308 p. 341.

² Keyser v. Hitz, 2 Mackey, 473; Casey v. Galli, 94 U. S., 673.

³ State v. Phoenix Bank, 34 Conn., 205; State v. Hartford National Bank, id., 240.

organized under state laws, and having branches, the capital being joint and assigned to and used by the mother-bank and branches in definite proportions, to become a national banking association in conformity with existing laws, and to retain and keep in operation its branches, or such one or more of them as it may elect to retain; the amount of the circulation redeemable at the mother-bank, and each branch, to be regulated by the amount of capital assigned to and used by each.¹

§ 35. "Nothing in this Title shall affect any appointments made, acts done, or proceedings had or commenced prior to the third day of June, eighteen hundred and sixty-four, in or toward the organization of any national banking association under the act of February twenty-five, eighteen hundred and sixty-three; but all associations which, on the third day of June, eighteen hundred and sixty-four, were organized or commenced to be organized under that act, shall enjoy all the rights and privileges granted, and be subject to all the duties, liabilities, and restrictions imposed by this Title, notwithstanding all the steps prescribed by this Title for the organization of associations were not pursued, if such associations were duly organized under that act."²

Rights reserved of associations organized under act of 1863.
Rev. Stat. Sec. 5156.

§ 36. **Conversion by savings bank.** In 1876 Congress further enacted that "all savings or other banks now organized, or which shall hereafter be organized, in the District of Columbia, under any act of Congress, which shall have capital stock paid up in whole or in part, shall be subject to all the provisions of the Revised Statutes, and of all acts of Congress applicable to national banking associations, so far as the same may be applicable to such savings or other banks: *Provided*, That such savings banks now established shall not be required to have a paid-in capital exceeding one hundred thousand dollars."³ By this act a savings bank organized by the law of that district could be converted into a national banking association.⁴ Before that time only banks incorporated by a special law, or by the general law of a state could be converted.

§ 37. "Whenever a certificate is transmitted to the Comptroller of the Currency, as provided in this Title, and the association

Preliminary examination by Comptroller.

¹ Act March 3, 1865, 13 Stat. at Large, 38 C. 2 S. Ch. 78, Sec. 7.

² Act 1864, Sec. 62.

³ June 30, 1876, 19 Stat. at Large, 44 C. 1 S. Ch. 156, Sec. 6.

⁴ Keyser v. Hitz, 2 Mackey, 473.

Rev. Stat.
Sec. 5168.

transmitting the same notifies the Comptroller that at least fifty per centum of its capital stock has been duly paid in, and that such association has complied with all the provisions of this Title required to be complied with before an association shall be authorized to commence the business of banking, the Comptroller shall examine into the condition of such association, ascertain especially the amount of money paid in on account of its capital, the name and place of residence of each of its directors, and the amount of the capital stock of which each is the owner in good faith, and generally whether such association has complied with all the provisions of this Title required to entitle it to engage in the business of banking ; and shall cause to be made and attested by the oaths of a majority of the directors, and by the president or cashier of the association, a statement of all the facts necessary to enable the Comptroller to determine whether the association is lawfully entitled to commence the business of banking.”¹

Certificate
of authority
to com-
mence busi-
ness.
Rev. Stat.
Sec. 5169.

§ 38. “If, upon a careful examination of the facts so reported, and of any other facts which may come to the knowledge of the Comptroller, whether by means of a special commission appointed by him for the purpose of inquiring into the condition of such association, or otherwise, it appears that such association is lawfully entitled to commence the business of banking, the Comptroller shall give to such association a certificate, under his hand and official seal, that such association has complied with all the provisions required to be complied with before commencing the business of banking, and that such association is authorized to commence such business. But the Comptroller may withhold from an association his certificate authorizing the commencement of business, whenever he has reason to suppose that the shareholders have formed the same for any other than the legitimate objects contemplated by this Title.”²

Publication.
Rev. Stat.
Sec. 5170.

§ 39. “The association shall cause the certificate issued under the preceding section to be published in some newspaper printed in the city or county where the association is located, for at least sixty days next after the issuing thereof ; or, if no newspaper is published in such city or county, then in the newspaper published nearest thereto.”¹

¹ Act 1864, Sec. 17.

² Act 1864, first sentence, Sec. 18; last sentence, Sec. 12.

§ 40. "The usual business of each national banking association shall be transacted at an office or banking house located in the place specified in its organization certificate."²

Place of business.
Rev. Stat.
Sec. 5190.

§ 41. "Every association which shall have failed to pay up its capital stock, as required by law, and every association whose capital stock shall have become impaired by losses or otherwise, shall, within three months after receiving notice thereof from the Comptroller of the Currency, pay the deficiency in the capital stock, by assessment upon the shareholders pro rata for the amount of capital stock held by each; and the Treasurer of the United States shall withhold the interest upon all bonds held by him in trust for any such association, upon notification from the Comptroller of the Currency, until otherwise notified by him. If any such association shall fail to pay up its capital stock, and shall refuse to go into liquidation, as provided by law, for three months after receiving notice from the Comptroller, a receiver may be appointed to close up the business of the association, according to the provisions of section fifty-two hundred and thirty-four:³ *And provided*, That if any shareholder or shareholders of such bank shall neglect or refuse, after three months' notice, to pay the assessment, as provided in this section, it shall be the duty of the board of directors to cause a sufficient amount of the capital stock of such shareholder or shareholders to be sold at public auction (after thirty days' notice shall be given by posting such notice of sale in the office of the bank, and by publishing such notice in a newspaper of the city or town in which the bank is located, or in a newspaper published nearest thereto,) to make good the deficiency, and the balance, if any, shall be returned to such delinquent shareholder or shareholders."⁴

Payment of deficiency in capital stock enforced.
Rev. Stat.
Sec. 5205.

Sale of delinquent's share.

¹ Act 1864, Sec. 18.

² Act 1864, Sec. 8.

³ Act March 3, 1873, 17 Stat. at Large, 42 C. 3 S. Ch. 269, Sec. 1.

⁴ Act June 30, 1876, 19 Stat. at Large, 44 C. 1 S. Ch. 156, Sec. 4.

CHAPTER III.

EXTENSION OF NATIONAL BANKING ASSOCIATIONS.¹

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| § 42. Period of extension.
43. Mode of effecting it.
44. Examination and granting of certificate.
45. Suits by and against banks. | § 46. Proceedings when shareholder does not assent to extension.
47. Redemption of notes and issue of new ones.
48. Liquidation of expiring banks. |
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Extension of
charters for
twenty
years.

§ 42. In 1882 Congress enacted "that any national banking association organized under the acts of February 25, 1863, June 3, 1864, and February 14, 1880, or under sections 5133, 5134, 5135, 5136, and 5154 of the Revised Statutes of the United States, may, at any time within the two years next previous to the date of the expiration of its corporate existence under present law, and with the approval of the Comptroller of the Currency, to be granted, as hereinafter provided, extend its period of succession by amending its articles of association for a term of not more than twenty years from the expiration of the period of succession named in said articles of association, and shall have succession for such extended period, unless sooner dissolved by the act of shareholders owning two-thirds of its stock, or unless its franchise becomes forfeited by some violation of law, or unless hereinafter modified or repealed.

Mode of
effecting ex-
tension.

§ 43. "That such amendment of said articles of association shall be authorized by the consent in writing of shareholders owning not less than two-thirds of the capital stock of the association; and the board of directors shall cause such consent to be certified under the seal of the association, by its president or cashier, to the Comptroller of the Currency, accompanied by an application made by the president or cashier for the approval of the amended articles of association by the Comptroller; and such amended articles of association shall not be valid until the Comptroller shall give to such association a certificate under his hand and seal that the association has complied with all the provisions required to

¹ Act July 12, 1882, Public Laws, 47 C. 1 S. Ch. 290.

be complied with, and is authorized to have succession for the extended period named in the amended articles of association.

§ 44. "That upon the receipt of the application and certificate of the association provided for in the preceding section, the Comptroller of the Currency shall cause a special examination to be made, at the expense of the association, to determine its condition; and if after such examination or otherwise it appears to him that said association is in a satisfactory condition, he shall grant his certificate of approval provided for in the preceding section, or if it appears that the condition of said association is not satisfactory, he shall withhold such certificate of approval.

Examination and granting of certificate.

§ 45. "That any association so extending the period of its succession shall continue to enjoy all the rights and privileges and immunities granted and shall continue to be subject to all the duties, liabilities, and restrictions imposed by the Revised Statutes of the United States and other acts having reference to national banking associations, and it shall continue to be in all respects the identical association it was before the extension of its period of succession: *Provided, however,* That the jurisdiction for suits hereafter brought by or against any association established under any law providing for national banking associations, except suits between them and the United States, or its officers and agents, shall be the same as, and not other than, the jurisdiction for suits by or against banks not organized under any law of the United States which do or might do banking business where such national banking associations may be doing business when such suits may be begun: And all laws and parts of laws of the United States inconsistent with this proviso be, and the same are hereby, repealed.

How suits by and against banks may be brought.

§ 46. "That when any national banking association has amended its articles of association as provided in this act, and the Comptroller has granted his certificate of approval, any shareholder not assenting to such amendment may give notice in writing to the directors, within thirty days from the date of the certificate of approval, of his desire to withdraw from said association, in which case he shall be entitled to receive from said banking association the value of the shares so held by him, to be ascertained by an appraisal made by a committee of three persons, one to be selected by such shareholder, one by the directors, and the third by the first two; and in case the value so fixed shall not

Proceedings when shareholder does not assent to extension.

be satisfactory to any such shareholder, he may appeal to the Comptroller of the Currency, who shall cause a reappraisal to be made, which shall be final and binding; and if said reappraisal shall exceed the value fixed by said committee, the bank shall pay the expenses of said reappraisal, and otherwise the appellant shall pay said expenses; and the value so ascertained and determined shall be deemed to be a debt due, and be forthwith paid, to said shareholder, from said bank; and the shares so surrendered and appraised shall, after due notice, be sold at public sale, within thirty days after the final appraisal provided in this section: *Provided*, That in the organization of any banking association intended to replace any existing banking association, and retaining the name thereof, the holders of stock in the expiring association shall be entitled to preference in the allotment of the shares of the new association in proportion to the number of shares held by them respectively in the expiring association.

Redemption
of notes and
issue of new
ones.

§ 47. "That the circulating notes of any association so extending the period of its succession which shall have been issued to it prior to such extension shall be redeemed at the Treasury of the United States, as provided in section three of the act of June twentieth, eighteen hundred and seventy-four, entitled "An act fixing the amount of United States notes, providing for redistribution of national bank currency, and for other purposes," and such notes when redeemed shall be forwarded to the Comptroller of the Currency, and destroyed as now provided by law; and at the end of three years from the date of the extension of the corporate existence of each bank the association so extended shall deposit lawful money with the Treasurer of the United States sufficient to redeem the remainder of the circulation which was outstanding at the date of its extension, as provided in sections fifty-two hundred and twenty-two, fifty-two hundred and twenty-four, and fifty-two hundred and twenty-five of the Revised Statutes; and any gain that may arise from the failure to present such circulating notes for redemption shall inure to the benefit of the United States; and from time to time, as such notes are redeemed or lawful money deposited therefor as provided herein, new circulating notes shall be issued as provided by this act, bearing such devices, to be approved by the Secretary of the Treasury, as shall make them readily distinguishable from the circulating notes heretofore issued: *Provided however*, That each banking asso-

ciation which shall obtain the benefit of this act shall reimburse to the Treasury the cost of preparing the plate or plates for such new circulating notes as shall be issued to it.

§ 48. "That national banking associations whose corporate existence has expired or shall hereafter expire, and which do not avail themselves of the provisions of this act, shall be required to comply with the provisions of sections fifty-two hundred and twenty-one and fifty-two hundred and twenty-two of the Revised Statutes in the same manner as if the shareholders had voted to go into liquidation, as provided in section fifty-two hundred and twenty of the Revised Statutes; and the provisions of sections fifty-two hundred and twenty-four and fifty-two hundred and twenty-five of the Revised Statutes shall also be applicable to such associations, except as modified by this act; and the franchise of such association is hereby extended for the sole purpose of liquidating their affairs until such affairs are finally closed."

Liquidation
of expiring
banks.

CHAPTER IV.

POWERS OF NATIONAL BANKING ASSOCIATIONS.

General Powers, and those of Officers Relating to Personal Property.

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| <p>§ 49. Powers.</p> <p>50. Are private corporations.</p> <p>51. But created to aid the government.</p> <p>52. Have not the same rights in all the States.</p> <p>53. Power of the president.</p> <p>54. When his knowledge cannot be imputed to bank.</p> <p>55. His only powers incident to his office.</p> <p>56. Neither he nor cashier can give up a debt.</p> <p>57. Nor receive in exchange inferior security.</p> <p>58. Not make an unusual agreement</p> <p>58. (a-c) Exceptions to above rule.</p> <p>59. President and cashier can borrow from their bank.</p> <p>60. Who can remove the president.</p> <p>61. By-laws.</p> <p>62. Five grants of power in seventh clause of 5136th section.</p> <p>63. Right to purchase notes and bills.</p> <p>63. (a) Cannot discount note containing unusual stipulation.</p> <p>64. Can collect notes.</p> <p>65. Can buy and sell government bonds.</p> <p>65. (a) And coupons on state bonds.</p> <p>66. Can it deal in other securities.</p> <p>67. Consequence of exceeding its authority.</p> | <p>§ 68. Can lend on collateral security.</p> <p>69. Including warehouse receipt.</p> <p>70. But cannot lend its credit.</p> <p>71. Can borrow on its own notes.</p> <p>72. Can sell or assign its interest in pledged coin.</p> <p>73. Can compromise a debt.</p> <p>74. And pay money to effect a favorable settlement.</p> <p>75. Converted bank is liable for deposits of the other.</p> <p>76. Liability for special deposits.</p> <p>77. Liability of converted bank for special deposits.</p> <p>78. Power to make agreement to recover stolen property.</p> <p>79. Cannot indorse a note for compensation.</p> <p>80. When bank can guarantee note.</p> <p>81. Can hold deposit for benefit of other contracting parties.</p> <p>82. Cannot receive deposits when insolvent.</p> <p>83. Cannot deny its liability for wrongful use of another's property.</p> <p>84. Can hold cash dividend for shareholder's debt.</p> <p>85. Cannot be garnished for deposit.</p> <p>85 (a). Employment of bank officers.</p> |
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Power to Hold Real Estate.

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| § 86. Power to hold real estate.
87. Meaning of the section.
88. National Bank <i>v.</i> Whitney.
89. National interpretation followed by state courts.
90. Transfer of real estate to secure previous debt.
91. Validity of mortgage to secure usurious note. | § 92. Purchase of additional real estate to secure debt.
93. Also prior mortgage.
94. Converted bank can take real estate of state bank.
95. Real estate may be taken as security in the form of stock.
96. Right to cut timber on real estate taken for debt.
97. No restriction on bank's power to sell. |
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*Restrictions relating to Loans, Dividends, Uncurrent Notes,
Certifying, and Title.*

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| § 98. Loans to any person shall not exceed one-tenth of capital.
99. Object and meaning of section.
100. Violation of section is no defense to borrower.
101. Right to transfer securities for such a loan.
102. Note held by converted bank is not within the meaning of section.
103. Director is liable if borrowing beyond legal limit.
104. Loans on its own stock prohibited. | § 105. Loans on circulation prohibited.
106. Limitation of bank's indebtedness.
107. When dividends cannot be declared.
108. Must not pay uncurrent notes.
109. Certification of what checks prohibited.
109 (a). Verbal promise to pay check when drawer has funds.
110. What associations are governed by Chapters 2, 3, 4 of Title LXII, of Revised Statutes.
110 (a). When "National" is prohibited. |
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§ 49. "Upon duly making and filing articles of association and an organization certificate, the association shall become, as from the date of the execution of its organization certificate a body corporate, and as such, and in the name designated in the organization certificate, it shall have power—

"First. To adopt and use a corporate seal.

"Second. To have succession for the period of twenty years from its organization, unless it is sooner dissolved according to the provisions of its articles of association, or by the act of its shareholders owning two-thirds of its stock, or unless its franchise becomes forfeited by some violation of law.

"Third. To make contracts.

"Fourth. To sue and be sued, complain and defend, in any court of law and [or] equity, as fully as natural persons.

"Fifth. To elect or appoint directors, and by its board of directors to appoint a president, vice-president, cashier, and other

Powers.
Rev. Stat.
Sec. 5136.

officers, define their duties, require bonds of them and fix the penalty thereof, dismiss such officers or any of them at pleasure, and appoint others to fill their places.

"Sixth. To prescribe, by its board of directors, by-laws not inconsistent with law, regulating the manner in which its stock shall be transferred, its directors elected or appointed, its officers appointed, its property transferred, its general business conducted, and the privileges granted to it by law exercised and enjoyed.

"Seventh. To exercise by its board of directors, or duly authorized officers or agents, subject to law, all such incidental powers as shall be necessary to carry on the business of banking; by discounting and negotiating promissory notes, drafts, bills of exchange, and other evidences of debt; by receiving deposits; by buying and selling exchange, coin, and bullion; by loaning money on personal security; and by obtaining, issuing, and circulating notes according to the provisions of this Title.

"But no association shall transact any business except such as is incidental and necessarily preliminary to its organization, until it has been authorized by the Comptroller of the Currency to commence the business of banking."¹

§ 50. **Are private corporations.** In setting forth more minutely the powers of the national banking associations it may be remarked that they are "private corporations, organized under a general law of Congress by individual stockholders, with their own capital, for private gain, and managed by officers, agents, and employés of their own selection. They constitute no part of any branch of the government of the United States, and whatever public benefit they contribute to the country in return for grants and privileges conferred upon them by statute is of a general nature, arising from their business relations to the people through individual citizens, and not as direct representatives of the state as a body politic in exercising its legal and constitutional functions."²

§ 51. **But are created to aid the government.** Nevertheless, so Judge Swayne has remarked,³ they "are instru-

¹ Act, 1864, Sec. 8.

² Richardson, J., *Branch v. The United States*, 12 U. S. Ct. of Claims, 281, p. 286.

³ *Farmers & Mechanics' National Bank v. Dearing*, 91 U. S., 29 p. 33.

ments designed to be used to aid the government in the administration of an important branch of the public service. They are means appropriate to that end. Of the degree of the necessity which existed for creating them, Congress is the sole judge. Being such means, brought into existence for this purpose, and intended to be so employed, the state can exercise no control over them, nor in any wise affect their operation, except in so far as Congress may see proper to permit. Anything beyond this is an abuse, because it is the usurpation of power which a single state cannot give. Against the national will 'the states have no power, by taxation or otherwise, to retard, impede, burthen, or in any manner control, the operation of the constitutional laws enacted by Congress to carry into execution the powers vested in the general government.' The power to create carries with it the power to preserve. The latter is a corollary from the former."

§ 52. **They have not the same rights in all the states.** But "it is far from correct to say that because they are organized under a law of the United States, they possess the same and equal rights in all the states. They must carry on their business of banking at the place named in their organization certificate, and nowhere else. For all practical purposes they exercise their functions only within the limits of the state in which they are located, and should one of them attempt to carry on business outside of those limits, it would find itself completely, without authority."¹ In New York, consequently, a national bank which is organized and doing business in another state cannot keep an office of discount and deposit there, nor maintain an action on any note discounted at such an office.²

§ 53. **Power of the president.** Leaving this general view of the section we shall first inquire into the power conferred on the president. He "has very little inherent power," says a good authority.³ "It is his duty to preside at the meetings of the board of directors, and he has charge of the litigation of the bank; and other than these he has no power inherently over and beyond another director.⁴ We are not advised the vice president of a bank has inherently any other than contingent

¹ McCrary, J., *St. Louis National Bank v. Allen*, 2 McCrary p. 95.

² *National Bank v. Phoenix Warehousing Co.*, 6 Hun, 71.

³ Baker, J., *First National Bank v. Sherburne*, 14 Brad., 566 p. 572

⁴ *Hodge v. National Bank*, 22 Gratt., 51.

duties to perform, unless it be he is also a member of the board of directors. As a matter of fact, these officers may frequently transact important business for the bank. Sometimes it is done by express authority from the directors, and sometimes, if done with the knowledge and approbation or the tacit sanction of the board, it may be regarded as legalized by the principles of ratification or usage. The powers and duties of a cashier are much more numerous. In all transactions in which the bank may lawfully engage, the cashier is its managing agent. While he is the business officer of the bank, it is in the sense of one who transacts the business, and not of one who regulates and controls it." The banking law, though, does specify that "the president and cashier of every national banking association shall cause to be kept at all times a full and correct list of the names and residences of all the shareholders in the association, and the number of shares held by each, in the office where its business is transacted."¹

§ 54. When his knowledge cannot be imputed to the bank. The above remarks were made by the court in a suit by a national bank to recover the amount of a note, which was taken by its cashier before maturity in the usual course of business, and without notice or knowledge of a contract of warranty relating to a machine sold for which the note was given in payment. Nor did any of the directors know of the warranty except the president of the bank, who was a friend of the maker, and wrote both the note and the contract of warranty. Furthermore, he knew prior to the transfer of the note to the bank that the maker claimed that the machine would not work as warranted, and had demanded the note. The president, though, never informed any of the directors or officers of the bank of these facts, and he did not know that the bank had taken the note until two or three months after the transfer. As he had been clothed with no specific powers, and therefore possessed only those mentioned in the banking law, the court decided that his knowledge regarding the note was not a notice to the bank, and hence the defense of the maker, that there was a failure of consideration for the note, was not good. On the other hand, if the notice had been either to the cashier or to the board of directors, this would have been a notice to the bank.²

¹ Rev. Stat., Sec. 5210.

² First National Bank v. Sherburne, 14 Brad., 566.

§ 55. **His incidental powers.** "There is no specification of powers or duties to be exercised by the president or cashier," says Moncure, President, in *Hodge v. First National Bank*.¹ Other duties may be defined by the board of directors. When not thus defined, "we must regard the president and cashier," said the court in the case above mentioned, "as having only such powers as may be incident to their offices respectively in their very nature, in the absence of anything in the act of incorporation to the contrary; and we must regard all other powers needful to the management of the concerns and business of the bank as residing alone in the directory."

§ 56. **Neither he nor cashier can give up a debt.** Consequently, neither of these officers nor both acting together can "give up a debt or liability to the bank," nor make any admissions which would release the maker of a note due to the bank from his legal responsibility.²

§ 57. **Nor receive in exchange an inferior security.** Nor has the president power to sell or surrender securities, and receive others of an inferior value.³ In one case,⁴ at the time of organizing a bank an exchange committee was formed consisting of the president, the cashier, Lucas, whose eligibility was afterward questioned, and a fourth person. "This committee was formed under the by-laws of the corporation, and it was their duty to formulate rules and regulations by which the president and cashier were to be governed in making discounts, and in buying notes." A note owned by the bank, and which was well secured, was sold by the president for less than its full value "without any direction or authority from the exchange committee," nor was the sale ever "ratified by them or by the board of directors or the stockholders." He contended that he had authority to sell the note. But the court held otherwise, at least none was shown, said Reese, J. "No rules or regulations had ever been made by the exchange committee which would authorize it, and it was not authorized by the board of directors. There is nothing in the act

¹ 22 Gratt., p. 58.

² *Hodge v. First National Bank*, 22 Gratt., 51; *First National Bank v. Tisdale*, 18 Hun, 151. See *Bank of the United States v. Dunn*, 6 Peters, 51; *Bank of the Metropolis v. Jones*, 8 Id., 12; *State v. Davis*, 50 How. Pr., 447.

³ *First National Bank v. Bennett*, 33 Mich., 520.

⁴ *First National Bank v. Lucas*, 21 Neb., 280.

concerning the organization of national banks which would authorize it, and it is not shown to have been the custom of the bank to permit the president to make such sales to be subsequently ratified. Ordinarily, the authority of a president of a bank, as such, is very limited. He may bring an action at law and employ counsel for the purpose of protecting the rights of the bank, but he is not its executive officer nor has he charge of its moneyed operations. He has no more power of management, or disposal of the property of the corporation than any other member of the board of directors. It is true that extensive powers may be, and are, quite often, given to presidents of banking organizations by the charter of the bank or by the action of the managing board, and where so conferred, the right to proceed thereunder will exist; but there is no proof in this case of any such power.”¹

§ 58. **Nor make an unusual agreement.** If an agreement embodies a transaction which is “not to be within the usual course of business of the bank, it is not binding on the bank, although signed by the president thereof as such officer. He is the executive agent of the board of directors within the ordinary business of the bank, but cannot bind it by a contract outside thereof without special authority.”² So, too, a guaranty against loss or liability for signing as sureties, given by a bank president in his own name and without authority from the directors, to persons whom he had solicited thus to sign a note given to the bank, to retire a prior note held by it against their principal, is the individual contract of the president, and not binding on the bank.³

§ 58. (a) **Exceptions to above rule.** Sometimes, however, his contracts that are not of an ordinary nature will bind the bank. Thus O, the president of a bank, informed R that a bank was to be reorganized, and that if he would act as a director and his firm would give it all their business and use their influence to extend its business, ten shares of its stock would be given to him. R. accepted the proposition and was elected and served as director and his firm transacted their business with the bank. The agreement was a sufficient consideration to sustain the contract for the stock. The president proposed to act for the bank, which

¹ 21 Neb., 280 p. 285.

² First National Bank v. Hock, 89 Pa., 324 p. 327.

³ First National Bank v. Bennett, 33 Mich., 520.

ratified his action by receiving the benefits derived from the contract.¹

§ 58. (b) So, too, if the president of a national bank should instruct its correspondent bank to charge against the other the amount of a private note which it held against him in payment of the same, and this should be done and an account be rendered showing the transaction which is accepted by the first bank, it would be estopped from denying the charge; neither could a receiver subsequently appointed set aside the transaction. Said Drummond, J.: "Where a bank, established under an act of Congress, or in any other way, elects its own officers, the men who are interested in the bank, the stockholders, the depositors, ought to be bound by the authorized acts of the officers, or those which appear to be authorized, whether they are or not, and by the general mercantile usage of banks."²

§ 58. (c) **Can cashier insure return of collateral security.** The power of a cashier to insure the return of bonds received as collateral security for a note discounted by the bank has been questioned. In one case the cashier when receiving the bonds gave a receipt stating among other things that they were to be returned to the pledgor on the payment of his note. Having been stolen the bank was sued for their value. The court said that the bank was held to the common law liability by the action of the directors in agreeing to accept the bonds as collateral security, that the cashier's receipt expressed merely their action and that if the bank "had undertaken to do more, and to charge the bank as insurers, we are by no means ready to say that such a contract would have come within the powers of a cashier."³

§ 59. **President and cashier can borrow from their bank.** "The president, cashier or director of a national bank may borrow money from the bank, as any other person may, and execute a valid note for the same that will bind them as well as the bank receiving it; and such note is not void, nor, in the absence of fraud, can such note be repudiated or avoided by the bank by reason of that relation."⁴

¹ Rich v. State National Bank, 7 Neb., 201.

² Burton v. Burley, 9 Biss., 253 p. 257.

³ Jenkins v. National Village Bank, 58 Me., 275 p. 278.

⁴ Welker, J., Blair v. First National Bank of Mansfield, 2 Flippin, 111 p.

§ 60. **Who can remove the president.** The directors, and not the stockholders have power to remove the president. Nor does it "seem to be at all necessary that any by-laws should be adopted before a president may be chosen or removed, and another appointed in his place. This power is expressly given to the board, irrespective of any by-laws, both by the articles of association and by the act of Congress. Besides, it is a power that might be required to be exercised, or that it might be expedient to exercise, prior to the adoption of any by-laws."¹

§ 61. **By-laws.** The sixth sub-division of this section relates to the making of by-laws for the regulation of the transfer of stock, election of officers and other matters. It has been decided that "a majority, at a regular or legally called meeting, when a quorum is present, is sufficient to enact by-laws. That a by-laws informally adopted, may be subsequently ratified, and without any record of adoption, may be proved by the usage and acts of the bank, and parties dealing with it."²

§ 62. **Grants of power in seventh clause of 5136th section.** We have now reached the meaning of the seventh clause which specifies the kind of business which a national bank may transact. It "contains five distinct grants of power, and no one grant is a limitation on any other. By the first, the bank is authorized to discount promissory notes, drafts, bill of exchange, and other evidences of debt; second, to receive deposits; third, to buy and sell and exchange coin and bullion; fourth, to loan money on personal security;³ fifth, to obtain, issue, and circulate the national currency."⁴ Consequently a bank has power to to lend money on the note or other personal obligation of the borrower secured by a pledge of stock of a corporation as collateral security.⁵

§ 63. **Right to purchase notes and bills.** What limitations are to be placed on the first sub-division of this clause relating to the discount and negotiation of notes, drafts and other evidences of debts? Can a bank purchase a promissory note or bill of exchange? The right to do this was at first questioned by

¹ Peckham, J., *Taylor v. Hutton*, 43 Barb., 195 p. 197.

² Potter, J., *Lockwood v. Mechanics' National Bank*, 9 R. I., p. 335.

³ "I understand by this," said Judge Giles whom we are quoting, "on any other personal security than is mentioned in the first grant."

⁴ *Shoemaker v. National Mechanics' Bank*, 2 Abb. U. S., 416 p. 423.

⁵ *Id.*

some courts. Said Cornell, J., speaking for the Supreme Court of Minnesota :¹ "The incidental power to negotiate notes to the extent necessary to carry on the business of banking simply implies an authority to realize upon such commercial paper as the bank may receive in the lawful conduct of its business by negotiating, selling and transferring it by means a of re-discount obtained, or otherwise. It gives no implied authority to speculate or traffic in paper of the character of the note in question, or in financial securities of any description." This view found favor in Maryland, though by a divided court.² Judge Grason, who spoke for the majority, qualified his opinion with the remark that a national bank might invest its surplus capital in notes.

The right, however, of a national bank to buy negotiable notes and bills of exchange is no longer questioned.³ The Supreme Court of Ohio has decided that the purchasing and discounting of paper is only a mode of loaning money, and a national bank has a right to buy notes and bills which are perfect and available to the borrower, as well as his own notes which are made to the bank.⁴ The same view is maintained in Illinois, though not by the highest court. In the case of the First National Bank v. Sherburne,⁵ a note was indorsed in blank by the payee, and before maturity was delivered for value to the cashier of the bank. It was held that the fair and reasonable presumption from the taking of the note in "the usual course of business" would be that it was discounted; that although in form and in common parlance it was a purchase of the note, yet in substance it was a loan by way of discount made by the bank to the payee. Judge Baker, in delivering the opinion of the court, said : "The argument made here is based upon the statement of the cashier that he purchased the note from Wise, and that it was bought in the usual course of business as he bought other notes. It may be questionable whether the words used in the statute, 'by negotiating' are broad enough to include that which was here done by the bank ; and yet

¹ First National Bank v. Pierson, 24 Minn., 140.

² Lazear v. National Union Bank, 52 Md., 78.

³ Merchants' National Bank v. Hanson, 33 Minn., 40 ; Union National Bank v. Rowan, 23 S. Car., 339 ; Pape v. Capitol Bank, 20 Kansas, 440.

⁴ Smith v. Exchange Bank, 26 Ohio, 141.

⁵ 14 Brad., 566.

according to the lexicographers, the word 'negotiate' means not only 'to transfer,' 'to sell,' 'to pass,' but 'to procure by mutual intercourse and agreement with another.' It appears the note was taken by a national bank and 'in the usual course of business.' Admitting the bank had no power to become vested with the legal title to the note otherwise than by 'discounting,' it, the fair and reasonable presumption from the fact it was taken in the usual course of business of a national bank would be that it was discounted. The fact the cashier in stating the transaction uses the words 'purchased' and 'bought,' we do not deem of much importance. In *Atlantic State Bank v. Savery*¹ a similar statute was under consideration, and the word 'bought' was used by the witness, and a written memorandum of the transfer was made and delivered at the time, in which the word 'sold' was used, and yet it was held it was a discount, and the title to the note was valid. In the present case the paper was procured from Wise, who was both payee and indorser, and was transferred by an indorsement imposing the ordinary liability upon the indorser. Although in form and in common parlance it was a purchase of the note, yet in substance it was a loan by way of discount made by the bank to Wise, and the relation of debtor and creditor as between them was created." In Massachusetts, also, it has been held that a national bank has authority to buy the checks of individuals on other banks whether they are payable to bearer or order.² The question under consideration was raised in that state in two other cases, but the court disposed of them in another way. In these, it was held that a national bank which purchases a promissory note from an indorsee may maintain an action thereon in his own name against a prior party thereto without regard to the question whether the purchase was one which it was authorized by law to make.³ These decisions were based on a statute law of the state, and therefore do not touch the question. They are worth mentioning, however, in this review of the legal determinations of the question.

§ 63 (a). Cannot discount a conditional note. One limitation, though, remains, a national bank cannot discount a prom-

¹ 82 N. Y., 291.

² *First National Bank v. Harris*, 108 Mass., 514.

³ *National Pemberton Bank v. Porter*, 125 Mass., 333; *Atlas National Bank v. Savery*, 127 Mass., 75.

issory note that contains a stipulation for example, to pay an attorney's fee if the note shall be sued. ¹

§ 64. **Can collect notes.** The collecting of paper is also a part of the regular business of banking and is authorized by the national banking law; consequently it is liable like any other agent for negligence or misconduct in collecting it. ²

§ 65. **Can deal in national bonds.** A national bank has power to purchase and sell the bonds of the government.³ "It is the policy of the government," said Beck, J., in *Leach v. Hale*,⁴ "to encourage the purchase and sale of its bonds and to facilitate transactions in them, for thereby their value will be enhanced and the credit of the government in a measure promoted. It is not probable that Congress intended to impose restrictions upon the national banks, the most numerous class of financial agents in the country, which would operate to prohibit dealing in the securities of the government in a manner usual among bankers and banking institutions." In *Yerkes v. National Bank* ⁵ this subject was fully considered by Judge Earl. "While the statute specifies the main things a national bank may do, it does not undertake to specify all, and it does not prohibit all not specified. There is a large branch of banking business not particularly specified, that of collecting notes, checks, bills of exchange and other evidences of debt, for other persons. This forms a large share of the business of nearly all banks. They have correspondents and business connections which enable them to reach all parts of the country, and they have facilities and arrangements which enable them to do it with economy and dispatch. They take evidences of debt from their customers and other persons and send them to distant places for collection, and pay over the proceeds when realized to the persons entitled, retaining or receiving in some form a compensation or benefit for the service. It has never been doubted that they have the right and power to do this kind of business, as forming a legitimate part of banking business. If included under any specification contained in the statute it is

¹ *Merchants' National Bank v. Sevier*, 27 Alb. L. Jour., 447, 8th U. S. Circuit.

² *Mound City Paint Co. v. Commercial National Bank*, Sup. Ct. of Utah, 9 Pacific Rep., 709.

³ *Leuven v. First National Bank*, 54 N. Y., 671.

⁴ 31 Iowa, 69 p. 74.

⁵ 69 N. Y., 382.

under that of 'negotiating promissory notes, drafts, bills of exchange, and other evidences of debt.' To negotiate means, among other things, 'to transfer, to sell, to pass, to procure by mutual intercourse and agreement with another, to arrange for, to settle by dealing and management.' This power is absolutely essential to the business of the country, and, if necessary to uphold it, it may be found in the specification alluded to. A bank in doing this business does not take title to the paper left with it for collection. It is a bailee for hire, and simply undertakes to use ordinary diligence in making the collection. It receives its compensation either by commissions charged or incidental benefits received. But suppose a bank, instead of transmitting a note to be collected in money, transmits it for the purpose of procuring a renewal note, or for the purpose of getting additional security, or for the purpose of exchanging it for other securities; would the business then be such as it had no power to transact? Can it be claimed that a bank may transmit evidences of debt to be paid in money, while it has no power to transmit them to be renewed, or secured, or exchanged? It certainly cannot be successfully. The power in each case is of the same kind, and must rest upon the same general basis."

In this case the plaintiff sought to recover the value of some United States bonds which it was alleged the bank agreed to exchange for registered bonds, but failed to do. "If the plaintiff had delivered her bonds to the bank for collection, and the bank had agreed to collect them, no one would deny that the agreement would have been valid. If, after such an agreement, the bank had kept the bonds for an unreasonable time, until they were stolen, or had lost them, or rendered them worthless by its culpable negligence, it would have become liable to the plaintiff for their value.¹ Instead of agreeing to collect these bonds, the defendant agreed to send them to the Secretary of the Treasury and exchange them for registered bonds,² and for reasons above stated it had the same power to do this as it would have had to collect them. The exchange of the bonds would in a broad sense have been a negotiation of them. It would, as commonly understood, have been a legitimate business for a bank to do. We may take judicial

¹ *Smedes v. Utica Bank*, 20 Johns, 372, S. C., 3 Cow., 662; *Bank v. M'Kinster*, 11 Wend., 473; *Walker v. Bank*, 9 N. Y., 582; *Montgomery County Bank v. Albany City Bank*, 7 N. Y., 459. ² Rev. Stat., Sec. 3706.

notice of the fact that government bonds are usually bought and sold through banks, and that all the transactions in reference to them with the government are usually conducted through banks and persons doing banking business. They are moneyed securities, and the collection or exchange of them is a financial transaction in no sense foreign to the business of banking."

§ 65(a). **And also coupons on state bonds.** A bank has the right to own the coupons on state bonds. They are, says Judge Wheeler, "doubtless promissory notes within the statute of 3 and 4 Anne, ch. 9, and of the [section under consideration,] both of which use the term in the same sense unquestionably. They are also evidences of debt. The coupons, and the right to sue upon them, are all that are now in question." The judge added that no intimation of his views concerning the right to take and hold the bonds was intended by this discrimination.¹

§ 66. **Right to deal in other securities.** Can a national bank deal in other securities? In an instructive case the plaintiff, who held some shares of stock as trustee, kept an account with the Atlantic National Bank. These shares he placed in the hands of the cashier of the bank with the knowledge and approval of its president, to be sold when he should direct, and the proceeds were to be placed to his credit. It had previously been customary for the officers of the bank to receive stocks and bonds to be sold for him in that way. Subsequently, with the plaintiff's consent, the cashier transferred the shares to his own name, as cashier, on the representation that this act would facilitate their sale. Afterward the cashier hypothecated the shares with a broker to secure a loan for the purposes of his own speculation. The bank was held to be liable to the plaintiff for the cashier's wrongful act. Judge Daniels, who delivered the opinion of the court, said that "the National Banking Act appears to have been framed upon the theory that the institutions formed and existing under it could lawfully exercise the authority necessary for the sale of these stocks. The abstract power of making such sales it is true, was not conferred upon them. * * The ultimate object for which the certificates of stock were delivered by the plaintiff in this instance was the increase of his deposit account with the bank. The holding and sale of the shares were simply to contribute to the promotion of that result. They were incidents for the pur-

¹ First National Bank v. Town of Bennington, 16 Blatch., 53 p. 56.

pose of obtaining that end. And for that reason it was a part of the business of banking, as this institution was allowed to carry it on.”¹

The soundness of this decision may well be questioned. Says *Mercur*, C. J.: “A national bank is not, by its charter, authorized to act as a broker or agent in the purchase of bonds and stocks. Its specified powers given by statute, nor its incidental powers necessary to carry on the business of banking, do not extend to the transaction of such business.”² And *Waite*, C. J., has remarked that while dealing³ in stocks it not expressly prohibited, such a prohibition is implied from the failure to grant the power. In Maryland the power to engage in such business is strongly denied.⁴ In Kentucky the court incline the same way, *Lewis*, J., saying that “probably according to a fair construction of the National Bank Act the power is not expressly given to it to purchase and deal in [municipal bonds,] but neither is it expressly prohibited by the act to do so.”⁵

§ 67. Consequence of exceeding its authority. If, however, a bank should transcend its authority what would be the consequence? In the Maryland case, just mentioned, which was an action of deceit to recover damages for the alleged false representations of its teller in the sale to the plaintiff of some railroad bonds, it was held that the selling of railroad bonds on commission was not within the authorized business of a national bank; and consequently it was not responsible for any false representations which its teller might have made to the plaintiff and by which she was induced to purchase the bonds. In Kentucky a much more rational and just opinion has been expressed. In the *Logan County* case A agreed with the bank to sell to it county bonds at a certain price and which were to be resold to him at the same price, but refused to do so in consequence of an advance. The bank defended on the ground that it had no authority to execute such a contract. Said *Lewis*, J.: “It seems to us that if the proposition be conceded that [that a national bank had no authority to make such a contract this would not avail], for if it had no authority

¹ *Williamson v. Mason*, 12 Hun, 97 p. 103.

² *Bank of Allentown v. Hoch*, 89 Pa., 324 p. 327; *Fowler v. Scully*, 72 Pa., 456. ³ *First National Bank v. Exchange Bank*, 92 U. S., 122.

⁴ *Weckler v. First National Bank*, 42 Md., 581.

⁵ *Logan County Nat. Bank v. Townsend*, 3 S. W. Rep., p. 124.

under its charter to purchase the bonds, it cannot in justice and conscience refuse to abide by the judgment in this case which involves nothing more than the return of the bonds and receipt of what it paid for them. To do less cannot be justified without permitting it to profit by its own wrong in violating the law of Congress under which it exists.”¹ In harmony with this doctrine is the remark of Swayne, J., that “corporations are liable for every wrong they commit, and in such cases the doctrine of *ultra vires* has no application.”²

§ 68. **Can lend on collateral security.** In making loans and discounts a national bank can take United States bonds as collateral.³ It can also loan on the security of the stock of another national bank. And if the stock should be transferred to the creditor bank on the books, it would immediately incur the liability of a stockholder, and be thus held in the event of the failure of the other.⁴

§ 69. **Including warehouse receipt.** A national bank has power to lend money on the note or other personal obligation of the borrower, secured by the pledge of a warehouse receipt for merchandise as collateral security. In *Cleveland, Brown & Co. v. Shoeman*,⁵ Judge Dickman says: “A national bank, therefore, empowered to carry on the business of banking ‘by loaning money on personal security,’ may also exercise all powers incidental thereto. Vested with such authority, we do not think that in making a loan on the personal obligation of the borrower, with a warehouse receipt as a collateral security thereto, the bank exceeds its statutory powers. It is not to be limited in taking security for discounts and loans to the personal undertaking of the borrower, or to the security afforded by the names of indorsers of personal sureties, but may take a pledge of bonds, choses in action, stock of a corporation, bills of lading, and other personal chattels. The language ‘personal security’ would seem to refer to other personal security than is mentioned in the first grant of power in section 5136, authorizing the business of banking ‘by discounting and negotiating promissory notes.’ Dillon, J., in

¹ *Logan County Nat. Bank v. Townsend*, 3 S. W. Rep., 122 p. 124.

² *National Bank v. Graham*, 100 U. S., p. 702.

³ *Third National Bank v. Boyd*, 44 Md., 47.

⁴ *National Bank v. Case*, 99 U. S., 628.

⁵ 40 Ohio, 176 p. 181.

Pittsburgh Locomotive & Car Works v. State National Bank,¹ says: 'The words loans on personal security in the Banking Act are used in contradistinction to real estate security,' and in that case it was held that a national bank might take personal chattels, *e. g.*, a locomotive, as security for discounts and loans."²

§ 70. But cannot lend its credit. But while a "bank is allowed to lend money upon personal security ; * * it must be money that it loans, not its credit."³ It has no right on receiving a deposit of collateral security to guarantee an obligation of the depositor.⁴ And if a person should knowingly take as collateral security the draft of a national bank which had been drawn for the accommodation of a customer, he could not recover the amount from the receiver of the bank in the event of its failure.⁵

§ 71. Can borrow on its own notes. But a national bank can borrow money on its own notes and pledge its assets for their repayment.⁶ And if a president should give notes without special authority the bank would be liable if the directors acquiesced in his conduct. This may be presumed from long-continued courses of dealing and other facts.⁷

§ 72. Can sell or assign its interest in pledged coin. If a national bank should hold coin as a pledge it could sell and assign its special property therein, the assignee acquiring all the rights possessed by the bank.⁸

§ 73. Can compromise a debt. With respect to the right of a national bank to compromise a debt, Chief Justice Waite,⁹ after quoting the section under consideration, has said: "Authority is thus given to transact such a banking business as is specified, and all incidental powers necessary to carry it on are granted.

¹ 2 Cent Law J., 692.

² *Merchants' National Bank v. Mears*, 8 Biss., 158; *Shoemaker v. National Mechanics' Bank*, 1 Hughes, 101; *Pittsburgh Locomotive & Car Works v. State National Bank*, 1 N. Y. Weekly Dig., 332.

³ *Bond, J., Seligman & Co. v. Charlottesville National Bank*, 3 Hughes, 647, p. 651.

⁴ *Seligman & Co. v. Charlottesville National Bank*, Id., 647.

⁵ *Johnston Brothers & Co. v. Charlottesville National Bank*, Id., 657.

⁶ *Peters v. Alexander Brown & Sons*, 41 B. Mag., 131.

⁷ Id.

⁸ *Merchants' Bank v. State Bank*, 10 Wall., 604.

⁹ *First National Bank v. National Exchange Bank*, 92 U. S., 122, affg 39 Md., 600.

These powers are such as are required to meet all the legitimate demands of the authorized business, and to enable a bank to conduct its affairs within the general scope of its charter, safely and prudently. This necessarily implies the right of a bank to incur liabilities in the regular course of its business, as well as to become the creditor of others. Its own obligations must be met and debts due to it collected or secured. The power to adopt reasonable and appropriate measures for these purposes is an incident to the power to incur the liability or become the creditor. Obligations may be assumed that result unfortunately. Loans or discounts may be made that cannot be met at maturity. Compromises to avoid or reduce losses are oftentimes the necessary results of this condition of things. These compromises come within the general scope of the powers committed to the board of directors and the officers and agents of the bank, and are submitted to their judgment and discretion, except to the extent that they are restrained by the charter or by-laws. Banks may do, in this behalf, whatever natural persons could do under like circumstances."

§ 74. **And pay money and take securities in settlement.** Hence "a national bank * * may, in a fair and *bona fide* compromise of a contested claim against it growing out of a legitimate banking transaction, pay a larger sum than would have been exacted in satisfaction of the demand, so as to obtain by the arrangement a transfer of certain stocks in railroad and other corporations; it being honestly believed at the time that by turning the stocks into money under more favorable circumstances than then existed, a loss, which would otherwise accrue from the transaction, might be averted or diminished."¹

§ 75. **Converted bank is liable for deposits of the other.** "As a national bank is authorized by the second subdivision of the seventh clause to receive deposits, consequently if it should receive those of its predecessor—a state bank—it would be liable for them. "Any other doctrine," says Henry, J., "would be monstrous. As well contend that because one has his name changed by legislative enactment he thereby avoids all obligations incurred in his former name."²

¹ First National Bank v National Exchange Bank, 92 U. S., 122, affg 39 Md., 600.

² Eans v. Exchange Bank, 79 Mo., 182 p. 186.

§ 76. **Liability for special deposits.** A national bank has authority to receive special deposits and is responsible for their loss if this be occasioned by gross negligence. Says the United States Supreme Court: "It is now well settled that if a bank be accustomed to take [special deposits, for example, government bonds] and this is known and acquiesced in by the directors, and the property deposited is lost by the gross carelessness of the bailee, a liability ensues in like manner as if the deposit had been authorized by the terms of the charter."¹ But the burden of proving negligence rests on the plaintiff.²

§ 77. **Liability of converted bank for special deposit.** Moreover a national bank is liable for a special deposit of coin confided to its care when existing as a state bank. The rule of damage in such a case is the value of the coin at the date of the bank's conversion with interest. Its refusal to return the coin after a request to do so would be conclusive evidence of its conversion.³

§ 78. **Power to make agreement to recover its own and other stolen property.** A bank may resort to legal proceedings to recover its stolen property and also may agree to take similar action to recover the property of others deposited for safe-keeping and stolen at the same time. And if it should be lacking in proper diligence, skill and care in performing such an undertaking it could be held responsible therefor. Said Matthews J., in *Wylie v. Northampton Bank*:⁴ "It would certainly be competent for a national bank to take measures for the recovery of its own property lost [through burglary]. If the loss, as in the present case, included the property of others, and it was deemed best, having reference to the bank's own interest, that these measures should be taken by the bank alone for itself and

¹ *National Bank v. Graham*, 100 U. S., 699, affg 79 Pa., 106; *Lancaster County Nat. Bank v. Smith*, 62 Id., 47; *Scott v. National Bank*, 72 Id., 471; *Turner v. First National Bank*, 26 Iowa, 562; *Smith v. First National Bank*, 99 Mass., 605; *Chattahoochee National Bank v. Schley*, 58 Ga., 369; *Bank v. Zent*, 39 Ohio, 105; *Pattison v. Syracuse National Bank*, 80 N. Y., 82, affg 17 Hun, 419; *Prather v. Kean*, 29 Fed. R., 498; the question was raised but not decided in *De Haven v. Kensington National Bank*, 81 Pa., 95. The contrary authorities are *Wiley v. First National Bank*, 47 Vt., 546; *Whitney v. First National Bank*, 50 Id., 388.

² *First National Bank v. Rex*, 89 Pa., 308.

³ *Coffey v. National Bank*, 46 Mo., 140.

⁴ 119 U. S., 361 p. 370, affg 15 Fed. R., 428.

all concerned, it might lawfully undertake to act for others thus jointly concerned with itself as well as for itself alone, and want of proper diligence, skill, and care in the performance of such an undertaking would be ground of liability, to respond in damages for such failure."

§ 79. **Cannot indorse a note for compensation.** A bank has no right to indorse a note for compensation, but if it should do so, and afterward become the owner, this act would not impair the title of the bank or prevent it from collecting the note.¹ Only the government can object to its doing such an unlawful act.²

§ 80. **When bank can guarantee note.** "To hand over with an indorsement and guaranty is one of the commonest modes of transferring [promissory notes, drafts and bills of exchange]. Undoubtedly a bank might indorse, 'waiving demand and notice,' and would be bound accordingly. A guaranty is a less onerous and stringent contract than that created by such an indorsement."³ In *People's Bank v. National Bank* A made his promissory note payable to his own order, duly indorsed it to the order of B, and delivered it to a national bank, which negotiated it to B, and applied the proceeds to discharge a debt due from A. With the knowledge and consent of the president and cashier, who were also directors, but without authority from the board, C, a director and vice-president, contemporaneously guaranteed the payment of the note at maturity by indorsing the same in the name and on behalf of the bank. A, having failed to pay the note, B sued the bank which defended on the ground that the bank had no authority to do the act. But Judge Swayne said that "we see no reason to doubt that under the circumstances of this case it was competent for the defendant to give the guaranty here in question. It is to be presumed the vice-president had rightfully the power he assumed to exercise and the defendant is estopped to deny it. Where one of two innocent parties must suffer by the wrongful act of a third, he who gave the power to do the wrong must bear the burden of the consequences."⁴

¹ *National Bank v. Burr*, 27 Hun, 109.

² *Id.*, citing *Atlantic State Bank v. Savery*, 82 N. Y., 291; *Gold Mining Co. v. National Bank*, 96 U. S., 640; *Duncomb v. N. Y., H. & N. H. R. Co.*, 84 N. Y., 190; *National Bank v. Whitney*, 103 U. S., 99.

³ Swayne, J., *People's Bank v. National Bank*, 101 U. S., p. 183.

⁴ *Id.*, p. 183.

§ 81. Bank can hold deposit for benefit of other contracting parties. A national bank having received a deposit indorsed on the back of a contract which was made at the same time that S had on that day deposited therein \$2,500 "to be held by us as collateral security for the faithful performance of the within contract." It was held that the bank had power to make such a contract.¹ Even if the contract were *ultra vires*, yet as it was not illegal the defendant was estopped from setting up that defense as it would be a fraud on the plaintiff to allow the bank to do so he having entered into the contract in good faith.²

§ 82. Cannot receive deposits when insolvent. As a bank has no right to receive a deposit when hopelessly insolvent and thus defraud the depositor, so he is not precluded by this statute from recovering it. Said Andrews, J., in a case against the receiver of a bank who defended on this ground: The plaintiffs "are not seeking to enforce any right as creditors of the bank, but to reclaim their own property obtained by fraud. * * The right to a restoration in such case may be defeated by the acts or acquiescence of the defrauded party, or because the property has lost its identity and cannot be traced, or other persons have innocently acquired interests in ignorance of the fraud. But neither the creditor of an insolvent bank, nor its assignee in bankruptcy, has any equity to have the plaintiff's property applied in payment of the obligations of the bank, and the statute does not sanction so palpable an injustice."³

§ 83. Cannot deny its liability for wrongful use of another's property. A national bank which has wrongfully used the property of another cannot deny its liability therefor on the ground that it had no authority to do so. Says Walker, C. J.: "Shall the bank be heard to say that although it has appellee's property which it refuses to surrender to him, and has converted it to the use of the bank, and because it was obtained by the performance of acts not authorized by the charter, the bank will hold it and refuse to account for it or its proceeds?"⁴ Such cannot be the law."

¹ Bushnell v. Chautauqua County Nat. Bank, 10 Hun, 378.

² Id.

³ Cragie v. Hadley, 99 N. Y., 131 p. 135.

⁴ German National Bank v. Meadowcroft, 95 Ill., 124. An action can be maintained against a bank by a depositor for things deposited with the institution though they belonged to another, White v. Commonwealth National Bank, 4 Brewster, 234.

§ 84. **Can hold cash dividend for shareholder's debt.** "A bank has a right to hold a cash dividend as pledged for the indebtedment of the shareholder to the bank."¹ So if a bank should attach the shares of a shareholder, who is indebted to it, or sell them on a legal process, such action would not imply a purchase or holding by the bank. If, like a levy on real estate, the title necessarily passed to the bank by such proceedings, it might have no power to undertake them. But the title is not changed, and consequently the bank can have recourse to them.²

§ 85. **Cannot be garnished for deposit of a trust estate.** A national bank which has the funds of a bankrupt estate as a depository cannot be garnished or compelled to pay them "except upon a warrant of the assignee in bankruptcy countersigned by the district judge, or by the register in bankruptcy of the district."³

§ 85(a). **Employment of bank officers.** A national bank cannot hire one of its officers for a specified time. The act authorizes the association "to appoint a cashier and such other officers and agents as their business may require, and to remove them at pleasure and appoint others in their place." Consequently it has been decided in the case of a teller that he could be legally appointed "in no other way and could only be held by the tenure specified, to wit: the pleasure of the appointing power and the place must be regarded as having been taken and accepted under the provisions of the act."⁴

§ 86. "A national banking association may purchase, hold, and convey real estate for the following purposes, and for no others: Power to hold real estate. Rev. Stat. Sec. 5137.

First. Such as shall be necessary for its immediate accommodation in the transaction of its business.

Second. Such as shall be mortgaged to it in good faith by way of security for debts previously contracted.

Third. Such as shall be conveyed to it in satisfaction of debts previously contracted in the course of its dealings.

Fourth. Such as it shall purchase at sales under judgments, decrees, or mortgages held by the association, or shall purchase to secure debts due to it.

¹ Virgin, J., *Hagar v. Union National Bank*, 63 Maine, 509 p. 511.

² *Hagar v. Union National Bank*, 63 Me., 509 p. 514.

³ *Havens v. National City Bank*, 6 Th. & C., 346.

⁴ *Harrington v. First National Bank*, 1 Th. & C., 361 p. 366.

But no such association shall hold the possession of any real estate under mortgage, or the title and possession of any real estate purchased to secure any debts due to it, for a longer period than five years.”¹

§ 87. **Meaning of the section.** The state courts until 1878 uniformly held with one exception² that a national bank could not take real estate as security for a present or future debt.³ But in that year the United States Supreme Court decided, in the *Matthews* case,⁴ that the debtor could not raise this objection to the bank's enforcement of its obligation against him. If the bank had transcended its powers in taking such a security, the government alone could deal with the institution for doing so, and withdraw its charter. The effect of the decision is that a bank need fear nothing from the debtor, but only from the government, in taking such a security.

§ 88. **In the case of *National Bank v. Whitney***⁵ the question has been again answered by the same court. The debtor executed a mortgage to the bank providing for the payment of \$5,000 one year from date, and also declaring that it was made as collateral security for the payment of all notes which the bank at that time held against him and for his other indebtedness then due, or which thereafter should become due. The \$5,000 loan was paid, but his indebtedness, which accrued subsequently to the mortgage, amounted to a larger sum. It was contended that the mortgage to the bank, so far as it applied to future advances, was invalid because it was prohibited by the National Banking Law. After reviewing the case of the *National Bank v. Matthews*,⁶ Judge Field said that “in conformity with it we must hold that the mortgage to the bank * * is to be regarded as a valid security for the future advances to the mortgagor.”

§ 89. **National interpretation followed by state courts.** The state tribunals, since the decision in the *Matthews*

¹ Act 1864. Sec. 28.

² *First National Bank v. Haire*, 36 Iowa, 443.

³ *Fowler v. Scully*, 72 Pa., 456; *Woods v. Peoples' National Bank*, 83 Pa., 57; *Kansas Valley Nat. Bank v. Rowell*, 2 Dill., 371; *Crocker v. Whitney*, 71 N. Y., 161; *Ripley v. Harris*, 3 Biss., 199; *Merchants' National Bank v. Mears*, 8 Biss., 158; *Spafford v. First National Bank*, 37 Iowa.

⁴ 98 U. S., 621, revsg *Matthews v. Skinker*, 62 Mo., 329.

⁵ 103 U. S., 99.

⁶ 98 U. S., 621.

case, have followed it on several occasions, though plainly intimating that they were not convinced by the reasoning of the court.¹ One of the latest decisions is that of *Graham v. National Bank* by the Supreme Court of New Jersey.² Says Judge Scudder: "It is obvious that these loans were made by the bank on the security of these two separate mortgages, and that the making of the notes, the payment of the money by checks, and the delivery of the mortgages duly executed as security therefor, were concurrent acts. They were not, therefore, given as security for debts previously contracted, nor were the mortgaged lands conveyed in satisfaction of debts previously contracted in the course of the dealings of the bank. These cases, therefore, stand without the authority of the statute to purchase and hold real estate for such purpose. Each mortgage was given as security for a concurrent loan of money by discounting commercial paper. * * A late decision in the Supreme Court of the United States has given a construction of this statute and has authoritatively determined the validity of mortgages like those in controversy." Such a conveyance "is not void, but only voidable, and the sovereign alone can object. It is valid until assailed in a direct proceeding instituted for that purpose."³ Judge Andrews, also, speaking for the New York Court of Appeals says: "It is now settled that a national bank may lawfully take a mortgage to secure future indebtedness;"⁴ the highest court in Virginia has also followed the federal construction of the law,⁵ and so have the Supreme Courts of Mis-

¹ See *Penn v. Bornman*, 102 Ill., p. 534.

² 32 N. J. Eq., 804 p. 808.

³ The Supreme Court of Missouri in reviewing the *Matthews* case said "that while the law authorizing the establishment of national banks prohibits them when established from lending money on real estate security, yet if loans are made on such securities they are not void, but may be enforced. It was also held that a person borrowing money on such security could not interpose the statutory prohibition as a defense in a proceeding to enforce it, the court using the following language: 'We cannot believe it was meant that stockholders, and perhaps depositors and other creditors, should be punished and the borrower rewarded by giving success to this defense whenever the offensive act shall occur. The impending danger of a judgment of ouster and dissolution was, we think, the check, and none other contemplated by Congress,' " *Thornton v. National Exchange Bank*, 71 Mo., 221 p. 228.

⁴ *Simons v. First National Bank*, 93 N. Y., 269 p. 272.

⁵ *Wroten's Assignee v. Armat*, 31 Gratt., 228.

souri,¹ and of other states.² These decisions clearly settle the question between the banks and borrowers. Real estate may be taken as security for present and future indebtedness. But the government may proceed against a bank for taking such security,³ although no case has arisen, or is likely to arise, so long as loans are for a short period and the real estate is taken simply for security, and not for the purpose of acquiring the entire title to the same. The object of this prohibition, so one of the courts has said, is to prevent the banks from becoming landholders.

§ 90. Transfer of real estate to secure previous debt. Before the rendering of the decision in the Matthews case the courts very generally had sustained assignments of real estate to banks to secure debts not paid at maturity which had been contracted with the banks.⁴ Since then, this has been declared to be a lawful precaution and not contrary to the law.⁵ So, too, if a bank when taking a mortgage to secure pre-existing indebtedness should take a new note for the amount this would not impair the validity of the transaction. The debt is the same, the evidence only is changed by giving a new note for the old one.⁶

§ 91. Validity of mortgage to secure usurious note. And if the mortgage were to secure a note bearing an usurious rate of interest the validity of the security would not be impaired. Thus a national bank which extended the time for paying a debt at a usurious rate of interest, taking notes therefor and mortgage made by the debtor to a third person who indorsed them, did not lose the security notwithstanding the usurious character of the

¹ Thornton v. National Exchange Bank, 71 Mo., 221.

² Winton v. Little, 94 Pa., 64; Turner v. First National Bank, 78 Ind., 19; Oldham v. First National Bank, 85 N. Car., 240; Wherry v. Hale, 77 Mo., 20; First National Bank v. Elmore, 52 Iowa, 541; Mapes v. Scott, 94 Ill., 379; Warner v. DeWitt County Nat. Bank, 4. Brad., 305.

³ National Bank v. Whitney, 103 U. S., 99; Fortier v. New Orleans Nat. Bank, 112 U. S., 439.

⁴ Richards v. Kountze, 4 Neb., 200; Woods v. Peoples' National Bank, 83 Pa., 57; Worcester National Bank v. Cheeney, 87 Ill., 602; Allen v. First National Bank, 23 Ohio, 97; Ornn v. Merchants' National Bank, 16 Kansas, 341.

⁵ Gaar, Scott & Co. v. First National Bank, 20 Brad., 611.

⁶ Howard National Bank v. Loomis, 51 Vt., 349; Farmers & Merchants' Nat. Bank v. Wallace, 12 N. E. Rep., 439.

transaction. The interest would be avoided, but so far as the debt was valid the mortgage would remain a *bona fide* security.¹

§ 92. **Purchase of additional real estate to secure debt.** With respect to purchasing real estate at a judgment sale this may be done by a national bank² and also other land not covered by its mortgage, in order to secure its debt.³ Judge Devens, speaking for the Supreme Court of Massachusetts, has remarked: "It cannot be deemed that the only authority given to such associations is to purchase only the exact amount of the debts which may be owing to them, but they are entitled to purchase such real estate as may be necessary in order to secure the debts due to them so long as the security of such debts is the real object of the purchase."⁴

§ 93. **Also a prior mortgage.** A prior mortgage may also be purchased, if such be needful, to protect the interests of the bank. Said Niblack, J. C., in *Holmes v. Boyd, cashier*:⁵ "No restriction is imposed upon a banking association in taking a mortgage to secure a debt previously contracted. When, therefore, a national bank takes a mortgage for such a purpose, it becomes invested with all the rights which usually belong to a mortgagee. Among these is the right to protect itself by all the usual business methods, against the disastrous consequences likely to result from older liens upon the mortgaged property.⁶ We consequently know of no ground on which the authority of Boyd to purchase the note and mortgage in suit, for the use of the bank represented by him, can be seriously questioned."⁷

§ 94. **Converted bank can take real estate of state bank.** If a state bank should become a national banking association, and among its assets there should be a note secured by a mortgage on real estate, it could take the same and maintain an action of foreclosure thereon.⁸

¹ *Allen v. First National Bank*, 23 Ohio, 97.

² *Heath v. Second National Bank*, 70 Ind., 106.

³ *Reynolds v. Crawfordsville First Nat. Bank*, 112 U. S., 405.

⁴ *Upton v. National Bank*, 120 Mass., 153 p. 156; *Mapes v. Scott*, 88 Ill., 352; *Libby v. Union National Bank*, 99 Id., 622.

⁵ 90 Ind., 332 p. 336.

⁶ *First National Bank v. National Exchange Bank*, 92 U. S., 122.

⁷ Citing *Upton v. National Bank*, 120 Mass., 153.; *Ornn v. Merchants' National Bank*, 16 Kansas, 341; *Spafford v. First National Bank*, 37 Iowa, 181.

⁸ *Scofield v. State National Bank*, 9 Neb., 316.

§ 95. **Real estate may be taken as security in the form of stock.** If the property of a corporation should consist entirely of real estate, its stock could be taken as collateral security by a national bank for a loan.¹

§ 96. **Right to cut timber on real estate taken for debt.** Suppose a national bank has legally purchased land to secure its debt can it cut the timber that may be growing thereon and sell it to secure itself against loss? This question has arisen in West Virginia. "It appears," said Judge Jackson, "that the bank had loaned to the defendant, Donaldson, a large sum of money to engage in the lumber business in West Virginia; that subsequently he became embarrassed, and the bank, with a view of saving its debt, secured a deed of trust upon all of his property, which deed was foreclosed, and the bank purchased the property, and was compelled by its agent to conduct the business with a view of reimbursing itself out of the proceeds of the business, the money it had loaned. It may be conceded that there is no express power in the charter of this corporation that would authorize it to conduct a business outside of its legitimate business as a banking institution; but there is connected with all corporations certain implied powers which are incident to the express powers, and without which no corporation can successfully transact business. In this instance we see but an effort upon the part of the bank to secure and collect a debt due it. No one will question the right of a bank to lend its money in the manner authorized by its charter; as a consequence it must have the power to collect it, and, as incident to the exercise of such power, the right to secure and save the debt. We think this view is well sustained by authority."²

§ 97. **No restriction on bank's power to sell.** In selling the real estate of a bank, "there is no restriction," says Judge Spencer, "upon the power 'to convey.' The intent and policy of the law is manifest. It was to discourage, to prevent the accumulation of real estate in the hands of these banks. But if such was the intent, it would be strange if the power and right 'to convey,' to sell, were restricted. We would expect the largest liberty in this direction, as being in furtherance of purposes of the lawgiver. It is unreasonable to conclude that because the law gives

¹ Baldwin v. Canfield, 26 Minn., 43.

² Roebeling Sons' Co. v. First National Bank, 30 Fed. R., 744 p. 746.

the power to do business 'by loaning money on personal security,' and restricts the right to purchase real estate, that therefore it forbids the sale of such real estate as may have been lawfully acquired upon the usual and customary terms of the commercial world, and strikes with nullity such vendor's liens and mortgages as may be retained to secure deferred parts of the price. * * We conclude, therefore, that there is nothing in the law preventing a national bank from selling its real estate on terms of credit and reserving a mortgage to secure the price."¹

§ 98. "The total liabilities to any association, of any person, or of any company, corporation, or firm for money borrowed, including, in the liabilities of a company or firm, the liabilities of the several members thereof, shall at no time exceed one-tenth part of the amount of the capital stock of such association actually paid in. But the discount of bills of exchange drawn in good faith against actually existing values, and the discount of commercial or business paper actually owned by the person negotiating the same, shall not be considered as money borrowed."²

Loans to one party shall not exceed one-tenth of capital.
Rev. Stat. Sec. 5200.

§ 99. **Object and meaning of section.** "The object of this provision of the currency act," says Ruger, C. J., "was to guard national banks from the hazard of loaning money in improvident amounts upon speculative and accommodation paper, but it contemplated and permitted, to an unlimited amount, the discount of paper used and required in facilitating the transfer of property and money in the transaction of the legitimate business of the country."³ Consequently, bills of exchange—whose "drawers and drawees possessed the highest degree of commercial credit" at the time they were discounted and which were drawn against lumber, bought, manufactured, or consigned for sale—were not subject to the prohibition contained in this section. Such bills can be taken without limitation. "We think it entirely immaterial," says Ruger, C. J., "whether such bills are accompanied by a specific bill of lading in each case, or are drawn against property previously consigned, and existing either in its original form or in the shape of proceeds of sales in the hands of the consignees,"⁴

¹ New Orleans National Bank v. Raymond, 29 La. Ann., 355 p. 359.

² Act 1864, Sec. 29.

³ Second National Bank v. Burt, 93 N. Y., p. 244.

⁴ Id., p. 243.

§ 100. **Violation of section is no defense to borrower.** Although the liabilities of a person to a bank shall at no time exceed one-tenth part of the amount of its capital stock, a loan in excess of this restriction is not void, and may be enforced. It is true that such action by a bank would endanger its franchise, and the officers who should participate therein would be liable.¹ But we are not to give to this section, said Hallett, C. J., "a construction which will defeat the purpose for which it was enacted, and such will be the effect if we deny the right of the bank to recover money which it has paid out. I am persuaded that this section is to be regarded as a direction respecting the management of the bank, and not as a limitation of its powers."² Speaking for the United States Supreme Court in the same case Judge Hunt said: "We do not think that public policy requires or that Congress intended that an excess of loans beyond the proportions specified should enable the borrower to avoid the payment of the money actually received by him. This would be to injure the interests of creditors, stockholders, and all who have an interest in the safety and prosperity of the bank."³ The maker of a note cannot defend on the ground that a bank in loaning to him has violated this section. "The true rule is," says Nelson J., "that if the bank is to be punished for a violation of law, the government must enforce the penalty, and not an individual. The banking law, when fully examined, does not make the contract entered into in violation of Sec. 5200 void, and the stockholders are not to suffer when such a claim is made."⁴

§ 101. **Right to transfer securities for such a loan.** Nor can a national bank be enjoined from transferring to an innocent third person securities taken to secure a loan on the ground that it is in excess of one-tenth of its capital stock.⁵

¹ *Shoemaker v. National Mechanics' Bank*, 2 Abb. U. S., 416; *Stewart v. National Union Bank*, Id., 424; *Union Gold Mining Co. v. Rocky Mountain Nat. Bank*, 1 Colo., 531; *Mills County Nat. Bank v. Perry*, 33 N. W. Rep., 341.

² *Union Gold Mining Co. v. Rocky Mountain Nat. Bank*, 1 Colo., p. 543.

³ *Gold Mining Company v. National Bank*, 96 U. S., 640 p. 642; *O'Hare v. Second National Bank*, 77 Pa., 96; *Bly v. Second National Bank*, 79 Id., 453; see *Pangborn v. Westlake*, 36 Iowa, 546; *Stephens v. Monongahela National Bank*, 88 Id., 157; *Mapes v. Second National Bank*, 80 Id., 163.

⁴ *Wyman v. National Bank*, 29 Fed. R., 734.

⁵ *Elder v. First National Bank*, 12 Kansas, 238; *Shoemaker v. National Mechanics' Bank*, 31 Md., 396.

§ 102. **Note held by converted bank is not within the meaning of section.** Whenever a national bank is organized from a state bank and takes therefrom a discounted note for a larger amount than the national bank is authorized to loan to a single borrower, such note is not, nor is any note subsequently given, in renewal within the meaning of this section.¹ And if a national bank should seek to recover on a note which has been given by way of renewal for a balance due on a previous loan, which has been reduced by renewals and payments below the maximum sum which it was authorized to loan to a single borrower, the defense that the original loan was for a larger sum than the bank was authorized to make will fail.² Moreover, if a contract of this kind has been executed, which a court would not have enforced, it will leave the parties where it finds them and no aid or relief will be given to either.³

§ 103. **Director is liable if borrowing beyond legal limits.** Though directors are personally and individually liable for violating this statute, yet if a director be a borrower in excess of the sum which can be legally loaned to him, he is liable simply as a debtor to the bank.⁴

§ 104. "No association shall make any loan or discount on the security of the shares of its own capital stock, nor be the purchaser or holder of any such shares, unless such security or purchase shall be necessary to prevent loss upon a debt previously contracted in good faith; and stock so purchased or acquired shall, within six months from the time of its purchase, be sold or disposed of at public or private sale; or, in default thereof, a receiver may be appointed to close up the business of the association, according to section fifty-two hundred and thirty-four." This section is one of the most important battle-grounds in the banking law, but can be more perfectly reviewed in the chapter relating to the rights and liabilities of shareholders.

§ 105. "No association shall hereafter offer or receive United States notes or national bank notes as security or as collateral security for any loan of money, or for a consideration agree to withhold the same from use, or offer or receive the custody or

Loans on their own stock prohibited. Rev. Stat. Sec. 5201.

Loans on national, or bank notes prohibited. Rev. Stat. Sec. 5207.

¹ Allen v. First National Bank, 23 Ohio, 97.

² Id.

³ Stewart v. National Union Bank, 2 Abb. U. S., 424.

⁴ Witters v. Sowles, 31 Fed. R., 1.

promise of custody of such notes as security, or as collateral security, or consideration for any loan of money. Any association offending against the provisions of this section shall be deemed guilty of a misdemeanor and shall be fined not more than one thousand dollars and a further sum equal to one-third of the money so loaned. The officer or officers of any association who shall make any such loan shall be liable for a further sum equal to one-quarter of the money loaned; and any fine or penalty incurred by a violation of this section shall be recoverable for the benefit of the party bringing such suit.”¹

Limitation
on bank's in-
debtedness.
Rev. Stat.
Sec. 5202.

§ 106. “No association shall at any time be indebted, or in any way liable, to an amount exceeding the amount of its capital stock at such time actually paid in and remaining undiminished by losses or otherwise, except on account of demands of the nature following:

First. Notes of circulation.

Second. Moneys deposited with or collected by the association.

Third. Bills of exchange or drafts drawn against money actually on deposit to the credit of the association, or due thereto.

Fourth. Liabilities to the stockholders of the association for dividends and reserve profits.”²

§ 107. **When dividends cannot be declared.** No bank shall withdraw in the form of dividends any portion of its capital. And if its losses exceed its profits dividends must not be declared.³ The section and its meaning will be given in the next chapter.

Must not pay
uncurrent
notes.
Rev. Stat.
Sec. 5206.

§ 108. “No association shall at any time pay out on loans or discounts, or in purchasing drafts or bills of exchange, or in payment of deposits, or in any other mode pay or put in circulation, the notes of any bank or banking association which are not, at any such time, receivable, at par, on deposit, and in payment of debts by the association so paying out or circulating such notes; nor shall any association knowingly pay out or put in circulation any notes issued by any bank or banking association which at the time of such paying out or putting in circulation is not redeeming its circulating notes in lawful money of the United States.”⁴

Certification
of checks.
Rev. Stat.
Sec. 5208.

§ 109. “It shall be unlawful for any officer, clerk, or agent of any national banking association to certify any check drawn upon

¹ Act Feb. 19, 1869, 15 Stat. at Large, 40 C. 3 S. Ch. 32.

² Act 1864, Sec. 36.

³ Rev. Stat., Sec. 5204.

⁴ Act 1864, Sec. 39.

the association unless the person or company drawing the check has on deposit with the association, at the time such check is certified, an amount of money equal to the amount specified in such check. Any check so certified by duly authorized officers shall be a good and valid obligation against the association; but the act of any officer, clerk, or agent of any association, in violation of this section, shall subject such bank to the liabilities and proceedings on the part of the Comptroller as provided for in section fifty-two hundred and thirty-four.”¹ In the act for extending the life of the national banking associations it was enacted “that any officer, clerk, or agent of any national banking association who shall willfully violate the provisions of an act entitled ‘An act in reference to certifying checks by national banks,’ approved March 3, 1869, being section 5208 of the Revised Statutes of the United States, or who shall resort to any device, or receive any fictitious obligation, direct or collateral, in order to evade the provisions thereof, or who shall certify checks before the amount thereof shall have been regularly entered to the credit of the dealer upon the books of the banking association, shall be deemed guilty of a misdemeanor, and shall, on conviction thereof in any circuit or district court of the United States, be fined not more than \$5,000, or shall be imprisoned not more than five years, or both, in the discretion of the court.”²

§ 109(a). **Verbal promise to pay check when drawer has funds.** The certifying of checks as good which are given in the ordinary course of business is not prohibited by this section.³ Nor need the certificate be in writing. In a West Virginia case Paull, J., inquired: “Can it be successfully maintained, and should it be established as a fixed principle, that because a statute prohibits a bank from certifying a check when the drawee has not in its possession an amount of funds equal to the amount specified in the check, that therefore a verbal acceptance or promise made on its behalf by a proper officer to pay a check when the drawer has an amount of funds in possession of the bank sufficient for the purpose is null and void and cannot be enforced? We assume here, without argument, that it is sufficiently established, by both English and American authorities, that the condi-

¹ Act March 3, 1869, Stat. at Large, Ch. 135.

² Act July 12, 1882, 47 C. 1 S. Ch. 290, Sec. 13.

³ Merchants' Bank v. State Bank, 10 Wall., 604.

tional acceptance of a check, or the oral promise to pay a check are valid, and can be maintained. * * Because the act of Congress prohibits a bank from certifying a check when the drawer has no funds, why should that invalidate a promise on its part to pay a check when the drawer shall have funds for the purpose in its possession? This is but acting in accordance with the spirit of the act itself, refraining from making any promise which is operative until the bank is in the condition contemplated by the act. It is not seen how any interests of the bank are endangered by pursuing this course. Indeed, such a promise seems to be implied in the very existence of the bank, and the nature of the business it transacts."¹

Associations
governed by
act.
Rev. Stat.
Sec. 5157.

§ 110. In the Sixty-Second Title of the Revised Statutes which relates to the National Banks, it is enacted "the provisions of chapters two, three, and four² of this Title, which are expressed without restrictive words, as applying to 'national banking associations,' or to 'associations,' apply to all associations organized to carry on the business of banking under any act of Congress."

Use of
'national.'
Rev. Stat.
Sec. 5243.

§ 110(a). "All banks not organized and transacting business under the national-currency laws, or under this Title, and all persons or corporations doing the business of bankers, brokers, or savings institutions, except savings banks authorized by Congress to use the word 'national' as a part of their corporate name, are prohibited from using the word 'national' as a portion of the name or title of such bank, corporation, firm, or partnership; and any violation of this prohibition committed after the third day of September, eighteen hundred and seventy-three, shall subject the party chargeable therewith to a penalty of fifty dollars for each day during which it is committed or repeated."

¹ National Bank v. National Bank, 7 W. Va., 544 pp. 548, 549.

² These chapters relate to the (2) "obtaining and issuing circulating notes;" (3) "regulation of the banking business," and (4) "dissolution and receivership."

CHAPTER V.

ELECTION AND POWERS OF DIRECTORS, AND THE DECLARING OF DIVIDENDS.

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| <p>§ 111. Power of directors.</p> <p>112. Notice to director is not notice to bank.</p> <p>113. Number and election.</p> <p>114. They can resign.</p> <p>115. Votes of shareholders.</p> <p>116. Their qualifications.</p> <p>117. Their oath.</p> <p>118. Meaning of section.</p> <p>119. Liability for representations about ownership of stock.</p> <p>120. How vacancy is filled.</p> <p>121. Adjourned election.</p> <p>122. How president is chosen.</p> <p>123. Declaring of dividends.</p> <p>124. When declared must be paid.</p> <p>125. Cannot withdraw capital in form of dividend.</p> | <p>§ 126. Not liable for erroneous judgment in making dividend.</p> <p>127. Liability for unearned dividend.</p> <p>128. Penalty for violating Title.</p> <p>129. When they must sell stock of delinquent owners.</p> <p>130. Not liable for loans made in good faith.</p> <p>131. For what liable independently of statute.</p> <p>132. Opinion of New Jersey courts.</p> <p>133. Opinion of Wheeler, J.</p> <p>134. Liability of absent director.</p> <p>135. When not liable after resignation.</p> <p>136. Bank may bring the action.</p> <p>137. So can receiver.</p> <p>138. If he refuse, stockholder can.</p> <p>139. Action can be brought in state court.</p> <p>140. Other duties and liabilities.</p> |
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§ 111. A national bank has power "to exercise by its board of directors, or duly authorized officers or agents, subject to law, all such incidental powers as shall be necessary to carry on the business of banking." "This statute provides for the election of a president of the board, and otherwise assumes that the directors shall act unitedly as an organized body. The election of an individual as a director does not constitute him an agent of the corporation with authority to act separately and independently of his fellow-members. It is the board duly convened and acting as a unit that is made the representative of the company. The assent or determination of the members of the board acting separately and individually is not the assent of the corporation. The law proceeds upon the theory that the directors shall meet and counsel with each other, and that any determination affecting the corpo-

Their power
Rev. Stat.
Sec. 5135.
Clause sev-
enth.

ration shall only be arrived at and expressed after a consultation at a meeting of the board attended by at least a majority of its members.”¹ As the only powers conferred on directors are those which reside in them as a board and when thus acting collectively, the individual consent of a majority of the members acting separately is not enough to ratify the unauthorized appropriation of the money of a bank by its president or cashier.²

§ 112. **Notice to director is not to the bank.** Nor can a national bank be charged with the knowledge possessed by a director concerning the illegality of the consideration of a note discounted by the institution.³

Number and
election.
Rev. Stat.
Sec. 5145.

§ 113. “The affairs of each association shall be managed by not less than five directors, who shall be elected by the shareholders at a meeting to be held at any time before the association is authorized by the Comptroller of the Currency to commence the business of banking; and afterward at meetings to be held on such day in January of each year as is specified therefor in the articles of association. The directors shall hold office for one year, and until their successors are elected and have qualified.”⁴

§ 114. **They can resign.** It has been contended that “this section prohibits resignation during the year. This is not, however, understood to be its effect. The apparent purpose of the provision in regard to the term of office is to make it conform to the time of the new election, and not to absolutely require every director to serve the full term.”⁵

Votes.
Rev. Stat.
Sec. 5144.

§ 115. “In all elections of directors, and in deciding all questions at meetings of shareholders, each shareholder shall be entitled to one vote on each share of stock held by him. Shareholders may vote by proxies duly authorized in writing; but no officer, clerk, teller or bookkeeper of such association shall act as proxy; and no shareholder whose liability is past due and unpaid shall be allowed to vote.”⁶

Qualifica-
tions of di-
rectors.
Rev. Stat.
Sec. 5146.

§ 116. “Every director must, during his whole term of service, be a citizen of the United States, and at least three-fourths of the directors must have resided in the state, territory, or dis-

¹ Johnston, J., *First National Bank v. Drake*, 35 Kansas, p. 576.

² *Id.*, 564.

³ *Third National Bank v. Harrison*, 3 McCrary, 316.

⁴ Act 1864, Secs. 9, 10.

⁵ *Wheeler, J., Movius v. Lee*, 30 Fed. R., p. 301. ⁶ Act 1864, Sec. 11.

trict in which the association is located, for at least one year immediately preceding their election, and must be residents therein during their continuance in office. Every director must own, in his own right, at least ten shares of the capital stock of the association of which he is a director. Any director who ceases to be the owner of ten shares of the stock, or who becomes in any other manner disqualified, shall thereby vacate his place.”¹

§ 117. “Each director, when appointed or elected, shall take an oath that he will, so far as the duty devolves on him, diligently and honestly administer the affairs of such association, and will not knowingly violate, or willingly permit to be violated, any of the provisions of this Title, and that he is the owner in good faith, and in his own right, of the number of shares of stock required by this Title, subscribed by him, or standing in his name on the books of the association, and that the same is not hypothecated, or in any way pledged, as security for any loan or debt. Such oath, subscribed by the director making it, and certified by the officer before whom it is taken, shall be immediately transmitted to the Comptroller of the Currency, and shall be filed and preserved in his office.”²

Oath.
Rev. Stat.
Sec. 5147.

§ 118. **Meaning of section.** In construing this section with reference to two stockholders and directors of a state bank which became a national banking association, Judge Durfee said: “It adopts the directors of the state bank as the directors of the national bank for the time being. It makes no mention of any oath as being required of them, and it might happen that some of the directors thus adopted, not being owners of the amount of stock required by the act could not take the prescribed oath.”³

§ 119. **Liability for misrepresentation about ownership of stock.** If a director states on oath that he is the *bona fide* owner in his own right of the number of shares of stock then standing in his name on the books of the bank, and that they are not hypothecated or pledged as security for a loan or debt, and if he makes such a statement willfully and not believing that it is true, it is perjury if in truth he is not the owner of the stock or has pledged the same for a loan or debt.⁴

¹ Act 1864, Secs. 9, 10.

² Act 1864, Sec. 9.

³ *Lockwood v. Mechanics' National Bank*, 9 R. I., 308 p. 342.

⁴ *United States v. Neale*, 14 Fed. R., 767. See Rev. Stat., Sec. 5392.

Vacancy,
how filled.
Rev. Stat.
Sec. 5148.

§ 120. "Any vacancy in the board shall be filled by appointment by the remaining directors, and any director so appointed shall hold his place until the next election." ¹

Proceedings
if election is
not on
proper day.
Rev. Stat.
Sec. 5149.

§ 121. "If, from any cause, an election of directors is not made at any time appointed, the association shall not for that cause be dissolved, but an election may be held on any subsequent day, thirty days' notice thereof in all cases having been given in a newspaper published in the city, town, or county in which the association is located; and if no newspaper is published in such city, town or county, such notice shall be published in a newspaper published nearest thereto. If the articles of association do not fix the day on which the election shall be held, or if no election is held on the day fixed, the day for the election shall be designated by the board of directors in their by-laws, or otherwise; or if the directors fail to fix the day, shareholders representing two-thirds of the shares may do so." ²

President.
Rev. Stat.
Sec. 5150.

§ 122. "One of the directors, to be chosen by the board, shall be the president of the board." ³

Declaring of
dividends.
Rev. Stat.
Sec. 5199.

§ 123. "The directors of any association may, semi-annually, declare a dividend of so much of the net profits of the association as they shall judge expedient; but each association shall, before the declaration of a dividend, carry one-tenth part of its net profits of the preceding half-year to its surplus fund until the same shall amount to twenty per centum of its capital stock." ⁴

§ 124. **When declared must be paid.** "When a dividend has once been declared, the directors cannot afterward refuse to pay it, because they have determined to establish a surplus fund with a view to benefit the corporation and its stockholders. The dividend, when declared, becomes a debt, and cannot thenceforth be disposed of without the consent of him who is entitled to it." ⁵

Withdrawal
of capital
prohibited.
Rev. Stat.
Sec. 5204.

§ 125. "No association, or any member thereof, shall, during the time it shall continue its banking operations, withdraw, or permit to be withdrawn, either in the form of dividends or otherwise,

¹ Act 1864, Sec. 10.

² Id.

³ Act 1864, Sec. 9.

⁴ Act 1864, Sec. 33.

⁵ *Beers v. Bridgeport Spring Co.*, 2 Week. Dig., 8. This statement of the case is by Van Hoesen, J., in *Seeley v. New York National Exchange Bank*, 8 Daly, p. 403.

any portion of its capital. If losses have at any time been sustained by any such association, equal to or exceeding its undivided profits then on hand, no dividend shall be made; and no dividend shall ever be made by any association, while it continues its banking operations, to an amount greater than its net profits then on hand, deducting therefrom its losses and bad debts. All debts due to any associations, on which interest is past due and unpaid for a period of six months, unless the same are well secured, and in process of collection, shall be considered bad debts within the meaning of this section. But nothing in this section shall prevent the reduction of the capital stock of the association under section fifty-one hundred and forty-three."¹

§ 126. Not liable for erroneous judgment in making dividend. Bank directors cannot be held personally liable for money paid as dividends "to a greater amount than net profits, after deducting losses and bad debts," because they are in truth bad debts, but were not so regarded when the dividends were declared and paid. They are not liable for bad judgment concerning the condition of the assets without bad faith.²

§ 127. Liability for unearned dividend. Nor is the procuring of directors to declare a dividend when the bank has no net profits to pay the same a wilful misappropriation of its money for which they can be punished.³ Says Judge Woods: "It is an act done by an officer of the association in his official and not in his individual capacity. It is therefore an act of mal-administration and nothing more, which, while it may subject the association to a forfeiture of its charter, and the directors to a personal liability for damages suffered in consequence thereof by the association or its shareholders, does not render them liable to a criminal prosecution. The act belongs to the same class as the purchase by a banking association of its own shares when not necessary to prevent a loss on a debt due it."

§ 128. "If the directors of any national banking association shall knowingly violate, or knowingly permit any of the officers, agents, or servants of the association to violate any of the provisions of this Title, all the rights, privileges, and franchises of the association shall be thereby forfeited. Such violation shall, how-

Penalty for
violating
act.
Rev. Stat.
Sec. 5239.

¹ Act 1864, Sec. 38.

² *Witters v. Sowles*, 31 Fed. R., 1.

³ *United States v. Britton*, 108 U. S., 199 p. 206.

ever, be determined and adjudged by a proper circuit, district, or territorial court of the United States, in a suit brought for that purpose by the Comptroller of the Currency, in his own name, before the association shall be declared dissolved. And in cases of such violation, every director who participated in or assented to the same shall be held liable in his personal and individual capacity for all damages which the association, its shareholders, or any other person, shall have sustained in consequence of such violation."¹

Duty to sell
stock of de-
linquent
sharehold-
ers.
Act June 30,
1876.

§ 129. "If any shareholder or shareholders of such bank shall neglect or refuse, after three months' notice, to pay the assessment, as provided in this section, it shall be the duty of the board of directors to cause a sufficient amount of the capital stock of such shareholder or shareholders to be sold at public auction (after thirty days' notice shall be given by posting such notice of sale in the office of the bank, and by publishing such notice in a newspaper of the city or town in which the bank is located, or in a newspaper published nearest thereto,) to make good the deficiency, and the balance, if any, shall be returned to such delinquent shareholder or shareholders."²

§ 130. **Not liable for loans made in good faith.** The liability of national bank directors for making bad loans has been considered on several occasions. It may be remarked that they cannot be held personally responsible for losses on loans which were made by them in good faith, and as they thought at the time, prudent, but which were afterward seen to be hazardous.³

§ 131. **For what liable independently of statute.** Their liability for violations of duty or breaches of trust exist independently of any statute.⁴ In *Robinson v. Smith*,⁵ Chancellor Walworth remarked that "the directors of a corporation who willfully abuse their trust or misapply the funds of the company, by which a loss is sustained, are personally liable as trustees to make good that loss, and they are also liable if they suffer the corporate funds to be lost or wasted by gross negligence and inattention to the duties of their trust."

¹ Act 1864, Sec. 53.

² 19 Stat. at Large, 44 C. 1 S. Ch. 156, Sec. 4.

³ *Witters v. Sowles*, 31 Fed. R., 1.

⁴ *Brinckerhoff v. Bostwick*, 88 N. Y., p. 58.

⁵ 3 Paige's Ch., 222.

§ 132. **Opinion of New Jersey courts.** "When the act of the officers has been such that its effect will be to put the institution out of existence, then, and then only," says Beasley, C. J., "are they made liable to the private suit of the stockholder or other person injured by their willful disobedience of the requirements of the law. * * The plaintiff's case is not brought within the scope of this remedial clause of this section, inasmuch as it does not show a willful violation of any one of such fundamental regulations."¹ But in another case against the same directors the Chancellor of New Jersey maintained a different view. "The case, made by the bill," he remarked, "is one of absolute neglect by the defendant directors of all the essential duties of their office. Conceding that the specific violations of duty pointed out might not of themselves, if they stood alone, suffice to fix personal liability, in connection with the general statement and charge of absolute neglect of all essential duties, they obviously assume a different character, for the allegations are to be taken all together, and the specifications are to be considered in the light of the general statement. The allegations of the bill are sufficient to fix personal liability upon the directors. The case made by them is one of the most absolute and unqualified inattention and neglect."²

§ 133. **Opinion of Wheeler, J.** The liability of directors for losses occasioned by their negligence was fully considered by Wheeler, J., in *Movius v. Lee*.³ The bill in the case was brought to charge the directors who were living, and the estates of those who were dead, for the losses sustained by a national bank through the misconduct of Lee, a large stockholder, and successively cashier, vice president and president of the institution. "The losses," remarked the court, "appear to have begun by the discount of the paper of persons engaged with Lee in business and speculations not adequately responsible for the amount of the discounts. The paper was usually indorsed by him, and sometimes secured, to some extent, by collaterals resulting from the avails of the discounts. Great losses from the transactions in which he was engaged fell upon him, and, through him, upon the bank. As the

¹ *Conway v. Halsey*, 44 N. J. Law, 462 p. 465.

² *Ackerman v. Halsey*, 37 N. J. Eq., 356 p. 364, *affd* by Court of Errors, 38 N. J. Eq., 501.

³ 30 Fed. R., 298 p. 302.

paper fell due it was renewed or replaced by other paper of like character, until a large part of the loans and discounts of the bank consisted in these notes of irresponsible persons indorsed by him. All these discounts, renewals, and substitutions were correctly entered, as in the usual course of business, upon the books of the bank, and appeared there fully with the entries of its other current business. These discounts were in violation of the prohibition in the banking law of an excess of one-tenth the amount of capital paid in of any person, company, or firm for money borrowed. Section 5200. They did not, however, appear to be so always or generally, for they might be, so far as they showed, commercial or business paper actually owned by the person negotiating them, within the provisions of the same law allowed to be discounted. On January 18, 1882, he took from the cash of the bank \$23,680, and put a slip of paper with his name and the amount upon it, in place of the money in the cash drawer, and on February 15, \$16,737.50, in like manner, without giving any other evidence of his indebtedness for these amounts. The former amount was reduced, by replacements of cash, to \$12,405, and the latter to \$11,435. These transactions were not concealed from the cashier or employes in financial matters of the bank, but did not appear on the books of the bank, except that they were shown on the cash blotter of the teller. These were clear violations of the provisions of the banking law mentioned. As Lee was the president and at the head of the bank, and was supposed by the cashier and subordinates to be a man of integrity and wealth, and these things were done by him and by his direction, they excited no suspicion among these persons that loss to the bank would be occasioned thereby until the very last days of the business of the bank, after all these losses had been incurred. As the suspicions of these persons were not aroused, they said nothing to any of the directors about what was going on, and they had no knowledge, supposition, or suspicion but that the business of the bank was proceeding lawfully, regularly and prosperously. In the banking law it is further provided that if the directors of any bank shall knowingly violate, or knowingly permit any of the officers, agents, or servants of it to violate any of the provisions of that law, every director who participated in or assented to such violation shall be liable for all damages sustained in consequence of

such violation¹ It is not claimed that any of these three directors so knowingly permitted or assented to any of these violations of this law as to become liable at all under this provision."

After carefully reviewing many authorities the court concludes that "no just ground of liability on the part of these directors is perceived—not on the express provisions of the statute on the subject, for they do not, and are not claimed to, come within that; not by the common law, for by that each is liable only for his own miscarriages, and none are shown."

§ 134. **Liability of absent directors.** When is a director liable for the misconduct of his co-directors during his absence, or without his knowledge? If authorized to be away, he is wholly free from blame and liability. In *Movius v. Lee*² the court said that the president who was absent in consequence of ill health and by authority of the board, "did nothing himself for which it is claimed that he became in any manner chargeable; and it does not appear that he was so responsible for what the others did that their misdoings could make him chargeable." Nor can directors be held on the ground of inattention in not preventing a hazardous, imprudent and disastrous loan which might be made by their associates without their knowledge, connivance or participation.³ But they are liable for continuing to do business when the slightest examination of the condition of their bank would show that it was hopelessly insolvent.⁴

§ 135. **When not liable after resignation.** If a director, before the expiration of his term, should sell his stock and receive payment and orally resign his office to the president he would cease to be such an officer, and could not be held for losses arising afterward through the negligence of the directors. Says Judge Wheeler, in a suit against Cushing and others who had been directors of the First National Bank of Buffalo: The purpose of section 5146 "obviously is to require the office of director to be kept in the hands of those who are personally and pecuniarily interested in the affairs of the bank. When Cushing bargained his stock, he ceased to be so interested. Good faith to the other shareholders, as their interests were guarded by these provisions

¹ Rev. Stat., Sec. 5239.

² 30 Fed. R., p. 302.

³ *Witters v. Sowles*, 31 Fed. R., 1.

⁴ *Delano v. Case*, 17 Brad., 531, affd 121 Ill., 247.

of the law, would seem to require that he should then cease to be a director. He appears to have taken this view, and to have done what he could to carry it out. There was no calamity impending or contemplated by him to be avoided by vacating his office, or which he could prevent by retaining it. There was no reason why he should not resign if he could. He was an officer elected to his place; it was an office that he was not obliged to accept, and would seem to be one that he was not obliged to hold. No mode of resignation was provided by law, and an oral one would be as good as any. The president was the head of the board of directors, who alone could fill the vacancy, and a resignation to him would be a resignation to the board.”¹

§ 136. **Bank may bring the action.** Whenever directors are liable the bank itself, if alive, may bring the action; or if under their control, the stockholders may proceed against them.² In a case of this nature, Judge Rapallo, speaking for the New York Court of Appeals has said: “For these losses the bank, if still exercising its corporate functions, would have a claim upon the guilty directors which it could enforce by action, but if it refused to prosecute, or if it still remained under the control of the very directors against whom the action should be brought, the stockholders would have a standing in a court of equity to sue in their own names making the corporation a party defendant.”³ The receiver, too, should be joined in order to render the determination complete. But if he were omitted, the bank could not object to the proceeding against the directors on that ground.⁴

§ 137. **So can the receiver.** A receiver, also, either in his own, or in the bank's name can enforce an action for the benefit of the stockholders, depositors and other creditors of the bank against the directors based on the non-performance or negligent performance of their duties.⁵ But if he should happen to be one of the guilty directors, he would not be a proper person to conduct such an action even though he were directed to do so by the Comptroller. The stockholders in such a case should sue in their

¹ *Movius v. Lee*, 30 Fed. R., 298 p. 301.

² *Hand v. Atlantic National Bank*, 55 How. Pr., 231.

³ *Brinckerhoff v. Bostwick*, 88 N. Y., 56, citing *Robinson v. Smith*, 3 Paige's Ch. 222; *Greaves v. Gouge*, 69 N. Y., 154.

⁴ *Hand v. Atlantic National Bank*, 55 How. Pr., 231.

⁵ *Movius v. Lee*, 30 Fed. R., 298.

own names.¹ If they are numerous the action may be brought in the name of one or more of them in behalf of all, and the bank and receiver should be made defendant.² And as the action is an equitable one the directors cannot demand a jury trial.³

§ 138. **If receiver refuse stockholder can.** Moreover, if a receiver should refuse to bring such an action, this could be done by a creditor and stockholder for the benefit of himself and of such other creditors and stockholders as might join him.⁴

§ 139. **Action can be brought in state court.** Before the enactment of the law of 1882, which greatly enlarged the sphere of the jurisdiction of the state courts, the question was considered whether such an action could be tried by a state tribunal. An affirmative answer was given. "The right of action," says Judge Rapallo, "is not in our opinion derived from the act of Congress, but depends upon general principles of equity; but in any aspect of the case the state courts have concurrent jurisdiction, unless exclusive jurisdiction has been conferred upon the United States courts."⁵ * * There can be no reason why civil actions brought by stockholders in place of the receiver, to enforce claims against delinquent directors or officers, should stand upon any different footing. * * There is nothing in the act which withdraws from the jurisdiction of the state courts civil actions to enforce rights of individuals against national banks or their officers."⁶

§ 140. **Other duties and liabilities.** Beside the duties and liabilities described in this chapter, there are others springing from the office of director which however, may be more, conveniently treated in other places. They can convert a state bank into a national one;⁷ sign reports that are made to the Comptroller of the Currency;⁸ give notice of the bank's liquidation;⁹ may be examined by bank examiners;¹⁰ and are liable for embez-

¹ *Brinckerhoff v. Bostwick*, 88 N. Y., 52.

² *Id.*

³ *Brinckerhoff v. Bostwick*, 105 N. Y., 567, third trial.

⁴ *Ackerman v. Halsey*, 37 N. J. Eq., 356, *affd* Court of Errors, 38 N. J. Eq., 501; *Conway v. Halsey*, 44 N. J. Law, 462.

⁵ *Claffin v. Houseman*, 93 U. S., 130; *Robinson v. National Bank*, 81 N. Y., 385; *National Bank v. Wells*, 79 *Id.*, 498.

⁶ *Brinckerhoff v. Bostwick*, 88 N. Y., 52 p. 60; *Cooke v. State National Bank*, 52 N. Y., 96; *Bletz v. Columbia National Bank*, 87 Pa., 87.

⁷ § 21.

⁸ § 293.

⁹ §§ 371, 372.

¹⁰ § 375.

zling;¹ or for knowingly violating or permitting any of the officers, agents or servants of the bank to violate the national bank act;² or for countersigning or delivering circulating notes in any other way than the law provides;³ or for receiving United States, or national bank notes as security for loans.⁴

¹ §§ 281, 282.

² § 285.

³ § 301.

⁴ § 262.

CHAPTER VI.

RIGHTS AND LIABILITIES OF SHAREHOLDERS.

How Stock is Transferred, and Rights of Transferee.

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| <p>§ 141. How stock is transferred.
 142. Effect of delivering certificate.
 143. Passing of title on shareholder's death.
 144. Bank should recognize transfer by foreign executor.
 145. Shareholder has absolute right to transfer.
 146. Effect of unrecorded transfer.</p> | <p>§ 146 (a). Stock sold by tax collector, but not transferred.
 147. Right to sue bank for misappropriation.
 148. When he can have bank enjoined.
 149. Court will not enforce contract whereby one person can get control.</p> |
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Prohibition of Bank Stock as Security for Loans.

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| <p>§ 150. Loans on its stock prohibited.
 151. Meaning of the section.
 152. Bank can have no lien on its own stock.
 153. Feckheimer v. National Exchange Bank.
 154. Reasons for changing the law.
 155. Bank can purchase to escape loss.</p> | <p>§ 156. Applies to bank as well as individual.
 157. Right of bank to take stock for past debt.
 158. If taken as security and sold pledgor cannot recover.
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Liability of Shareholders.

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| <p>§ 160. Liability of shareholders.
 161. Liable until transfer is made on books.
 162. Shareholder until then.
 163. Whitney v. Butler.
 164. When shareholder cannot escape liability by transfer.
 165. Pledgee is usually liable.
 166. Until the re-transfer is made on the books.</p> | <p>§ 167. But not if held in name of irresponsible trustee.
 168. Transfer by owner to escape liability is not valid.
 169. Effect of secret trust.
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 171. Married woman is liable.
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| <p>173. Liability ceases when bank liquidates.</p> <p>174. Also after Statute of Limitations has run.</p> <p>175. Liability is several and equal.</p> <p>176. Receiver is authorized to sue shareholders.</p> <p>177. Federal courts have jurisdiction regardless of amount.</p> <p>178. Mode of proceeding.</p> <p>179. How liability is fixed.</p> <p>180. Until Comptroller's order assessment is contingent.</p> <p>181. Receiver must aver that proceeding is necessary.</p> <p>182. He cannot maintain suit against "shareholders who sold in good faith.</p> | <p>183. Stock certificates are basis of assessments.</p> <p>184. Shareholder cannot deny validity of bank.</p> <p>185. He cannot offset claim due from bank.</p> <p>186. Liability for interest on bank's debts.</p> <p>187. Interest on assessment.</p> <p>188. Insolvency of one shareholder does not increase liability of the others.</p> <p>189. Receiver's power to ascertain whether transfer is valid.</p> <p>190. <i>Delano v. Butler.</i></p> <p>191. <i>Eaton v. Pacific National Bank.</i></p> |
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Proceedings by Creditors against Shareholders.

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| <p>§ 192. How they can proceed by statute.</p> <p>193. Meaning of statute.</p> <p>194. Proceedings before statute was passed.</p> <p>195. Requirements of bill. Amendments.</p> <p>196. When creditor can fill a bill.</p> <p>197. Receiver cannot maintain an action at same time.</p> <p>198. Creditor must prove insolvency of bank.</p> | <p>§ 199. Only creditors who have proved claims can recover.</p> <p>200. Decree fixing shareholder's liability.</p> <p>201. Creditor can also sue bank for claim due himself.</p> <p>202. Payment of receiver.</p> <p>203. When shareholders can recover of directors.</p> |
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Non-Liability of Trustees.

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| <p>§ 204. Trustees are not personally liable.</p> <p>205. Meaning of section.</p> <p>206. Liability of deceased shareholder's estate.</p> <p>207. How long may estate be held.</p> <p>208. <i>Witters v. Sowles.</i></p> <p>209. Liability of religious society.</p> <p>210. Of ward.</p> | <p>§ 211. If shareholder is trustee this should appear on book.</p> <p>212. This cannot be shown by evidence contrary to book.</p> <p>213. List of shareholders to be kept for inspection.</p> <p>214. Other rights of shareholders.</p> |
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Transfer of
shares.
Rev. Stat.
sec. 5139.

§ 141. "The capital stock of each association shall be divided into shares of one hundred dollars each, and be deemed personal property, and transferable on the books of the association in such manner as may be prescribed in the by-laws or articles of association. Every person becoming a shareholder by such transfer

shall, in proportion to his shares, succeed to all the rights and liabilities of the prior holder of such shares; and no change shall be made in the articles of association by which the rights, remedies, or security of the existing creditors of the association shall be impaired.”¹

§ 142. **Effect of delivering certificate.** The title to bank shares is acquired by the seller's delivery of his certificate of them to the purchaser. Says Field, J., in *Johnston v. Laffin*.² “Shares in the capital stock of associations, under the National Banking Law, are salable and transferable at the will of the owner. They are, in that respect, like other personal property. The statute recognizes this transferability, although it authorizes every association to prescribe the manner of their transfer. Its power in that respect, however, can only go to the extent of prescribing conditions essential to the protection of the association against fraudulent transfers, or such as may be designed to evade the just responsibility of the stockholder. It is to be exercised reasonably. Under the pretense of prescribing the manner of the transfer, the association cannot clog the transfer with useless restrictions, or make it dependent upon the consent of the directors or other stockholders. * * As between Laffin [who sold the stock] and the broker [who bought it for the president of the bank] the transaction was consummated when the certificate was delivered to the latter with the blank power of attorney indorsed, and the money was received from him. As between them, the title to the shares then passed; whether that be deemed a legal or equitable one matters not; the right to the shares then vested in the purchaser.”³

§ 143. **Passing of title on shareholder's death.** The stock of a national bank is “the personal property of the stockholder, having all the ordinary incidents of such, liable to transfer by sale, and all other means ordinarily applicable to such property. On the owner's death it passes to his legal represen-

¹ Act 1864, Sec. 12.

² 103 U. S., 800 p. 803, affg 5 Dill, 65.

³ This section was quoted in *Weyer v. Second National Bank* (57 Ind. 198), which case related to the transfer of national bank stock by an administrator, but the decision turned on the validity of the transfer by the common law of the state.

tatives, and is disposed of under the laws of the state in the usual course of administration, as any other personalty of which he may die possessed.”¹

§ 144. **Bank should recognize transfer by foreign executor.** If a bank does not provide in its by-laws or articles of association how its stock shall be transferred, it should recognize a transfer by a foreign executor who is duly appointed in another state.²

§ 145. **Shareholder has absolute right to transfer.** “A shareowner in a national bank, while it is a going concern has the absolute right in the absence of fraud to make a *bona fide* and actual sale and transfer of his shares at any time to any person capable in law of purchasing and holding the same, and of assuming the transferrer’s liabilities in respect thereto. * * The seller, for his own protection against creditors of the bank in case of insolvency, may transfer the same on the books to the vendee * * [and] may file a bill to compel the vendee to record the transfer.”³

§ 146. **Effect of unrecorded transfer.** Whether an unrecorded transfer shall hold against a subsequent attachment of the shares by a creditor who was ignorant of the transaction has been decided both ways. In one case A sold some shares of national bank stock to B, December 30, 1875, and assigned them by a transfer written on the back of the certificate. By the by-laws of the bank, stock was transferable only on the books of the bank. December 14, 1878, the shares were attached by a judgment creditor of A and sold and transferred by the bank to C. Neither the bank nor the creditor knew of the transfer to B. In January, 1880, B presented his certificate and transfer to the officers of the bank and demanded a transfer of the stock which was refused. He then brought a suit against the bank for refusing to make the transfer and recovered damages. In deciding the case Judge Carpenter said that “the question has been much debated and has been differently decided in different jurisdictions. I think it is settled for this court in a case involving the title to shares of

¹ Butler, J., *Hobbs v. Western National Bank*, U. S. Circuit Court, 8 Week. Notes, 131 p. 132.

² *Hobbs v. Western National Bank*, 8 Week. Notes, 131.

³ Dillon, J., *Johnston v. Laflin*, 5 Dill., 65 pp. 78, 79, and quoted with approval by Manning, J., in *Lesassier & Binder v. Kennedy*, 36 La. Ann., p. 543.

stock in a national bank, by the authority of the decision in *Bank v. Lanier*.¹ I decide, therefore, that the defendant corporation is liable in damages for the refusal to transfer the shares.”² Between the parties to a transfer, if unrecorded, it is valid “when no by-laws on the subject have been passed by the bank whose stock is in controversy.”³

§ 146 (a). **Stock sold by tax collector but not recorded.** In 1865 a tax collector assumed to sell fifty shares of national bank stock belonging to B, for taxes, which were bought by S, but never transferred on the books of the bank. S received the dividends until the tax was declared valid,⁴ and after that B received them. The laws of the state conferred no authority on the collector to sell such property and transfer the title.⁵ It was decided that no legal transfer of them had been made.⁶

§ 147. **Right to sue bank for misappropriation.** “A stockholder certainly has the rights of action against a corporation that are possessed by a corporation against any of its stockholders. If, therefore he should deliver money to a national bank to pay the balance due on his stock, for example which it should promise to appropriate in that manner, but, in truth, should appropriate in some other way, he could recover whatever damage he had sustained.”⁷

§ 148. **Right to have bank enjoined for misapplying funds.** The circuit court of the United States has jurisdiction on a proper bill filed by a stockholder of a bank to enjoin its officers from misapplying its funds by acts which are not warranted by the charter, or which would be a breach of trust. Judge Giles, when declaring this rule, quoted from the opinion of the supreme federal tribunal in the case of *Dodge v. Woolsey*.⁸

¹ 11 Wall., 369; see also *Continental National Bank v. Eliot National Bank*, 7 Fed. R., 369.

² *Hazard v. National Exchange Bank*, 26 Fed. R., 94; *Continental National Bank v. Eliot National Bank*, 7 Fed. R., 369; *Scott v. Pequonnock National Bank*, 15 Fed. R., 494.

³ *Shipman, J., Scott v. Pequonnock National Bank*, 15 Fed. R., p. 500.

⁴ *Bellows v. Weeks*, 41 Vt., 590.

⁵ *Barnes v. Hall*, 55 Vt., 420.

⁶ *Witters v. Sowles*, 32 Fed. R., 130.

⁷ *Wilson v. First National Bank*, 1 Wyoming, 108.

⁸ 18 How., p. 341.

"It is now no longer doubted, either in England or the United States, that courts of equity in both, have a jurisdiction over corporations, at the instance of one or more of their members, to apply preventive remedies by injunction to restrain those who administer them from doing acts which would amount to a violation of charters, or to prevent any misapplication of their capitals or profits which might result in lessening the dividends of stockholders, or the value of their shares, as either may be protected by the franchises of a corporation, if the acts intended to be done create what is in the law denominated a breach of trust."¹

§ 149. Court will not enforce contract whereby one person can get control. A court will not enforce a contract for the delivery of national bank shares if the object of the purchase be to obtain control of the majority of the stock. The enforcement of such a contract is opposed to public policy. In Foll's Appeal he contracted to sell and Greer to purchase fifteen shares in a national bank, which if executed would have enabled him to control its affairs. He was to pay for the stock with borrowed money. Said the court: "It is difficult to see how the small stockholders who have their modest earnings invested in it, the depositors who use it for the safe-keeping of their moneys, or the business public who look to it for accommodation in the way of loans, are to be benefited by the concentration of a majority of its stock in the hands of one man, or in such way that one man and his friends shall control it. Especially is this so when an attempt is made to control it by the use of borrowed capital. The temptation to use it for personal ends in such case is very strong. * * This purchase has not even the merit of being an investment on the part of the plaintiff. When a man buys and pays for stock with his own money, it may be regarded as an investment. When he buys it upon credit, or pays for it with borrowed money, it is a mere speculation. Were we to affirm this decree, I see no reason why we may not be called upon to use the extraordinary powers of a court of equity to assist in miscellaneous stock-jobbing operations. A party who is attempting to make a 'corner' in stock or in any article of merchandise who had made his contracts with that end in view, might with equal propriety call upon us to decree specific performance thereof."²

¹ Shoemaker v. National Mechanics' Bank, 2 Abb. U. S., 416 p. 418.

² 91 Pa., 434 p. 437.

§ 150. "No association shall make any loan or discount on the security of the shares of its own capital stock, nor be the purchaser or holder of any such shares, unless such security or purchase shall be necessary to prevent loss upon a debt previously contracted in good faith; and stock so purchased or acquired shall, within six months from the time of its purchase, be sold or disposed of at public or private sale; or, in default thereof, a receiver may be appointed to close up the business of the association, according to section fifty-two hundred and thirty-four."¹

Bank cannot
loan or pur-
chase its
stock.
Rev. Stat.
Sec. 5201.

§ 151. **Meaning of section.** The 36th section of the act of 1863 provided that "the capital stock of any association * * shall be assignable on the books of the association in such manner as its by-laws shall prescribe; but no shareholder in any association under this act shall have power to sell or transfer any share held in his own right so long as he shall be liable, either as principal, debtor, surety, or otherwise, to the association for any debt which shall have become due and remain unpaid, nor in any case shall such shareholder be entitled to receive any dividend, interest or profit on such shares so long as such liabilities shall continue, but all such dividends, interests, and profits shall be retained by the association, and applied to the discharge of such liabilities." The next year Congress swept away this provision, thus banking associations no longer have any lien on their stock for debts that are due to them. "Congress evidently intended," said Judge Davis, "by leaving out of the law of 1864 the 36th section of the act of 1863, to relieve the holders of bank shares from the restrictions imposed by that section. The policy on the subject was changed, and the directors of banking associations were in effect notified that thereafter they must deal with their shareholders as they dealt with other people."² Nor could the 36th section of the act of 1863 be perpetuated after the act of the following year by adopting a by-law pertaining to the transfer of stock while the first act was in force.³

§ 152. **Bank can have no lien on its own stock.** A bank, therefore, can neither make a lien on the security of its own stock, nor have a lien on the stock of a debtor to secure itself for

¹ Act 1864, Sec. 35.

² *Bank v. Lanier*, 11 Wall., 369 p. 376.

³ *Id.*

a debt which he may owe to the institution.¹ And a by-law which should prohibit an indebted stockholder from transferring his stock, though notice thereof should be indorsed on the certificate, would be void.²

§ 153. **In Feckheimer v. National Exchange Bank**³ L and S owned shares in the bank, and when they were in a failing condition and indebted to it, assigned them to F, as trustee. Their certificates stated that a transfer could be made only on the books of the bank, and that if indebted to it a transfer without the consent of the board of directors would be void. Nevertheless, the court decided that the trustee could transfer the shares to another person, and also demand the payment of all dividends that were due thereon.

§ 154. **Reasons for change in law.** The reasons for changing the law are well stated by Judge Davis, and clearly show that it is an improvement. "The power to transfer their stock is one of the most valuable franchises conferred by Congress on banking associations. Without this power, it can readily be seen the value of the stock would be greatly lessened, and obviously, whatever contributes to make the shares of the stock a safe mode of investment, and easily convertible, tends to enhance their value. It is no less the interest of the shareholder, than the public, that the certificate representing his stock should be in a form to secure public confidence, for without this he could not negotiate it to any advantage.

"It is in obedience to this requirement, that stock certificates of all kinds have been constructed in a way to invite the confidence of business men, so that they have become the basis of commercial transactions in all the large cities of the country, and are

¹ Bullard v. Bank, 18 Wall., 589; Conklin v. Second National Bank, 45 N. Y., 655; Second National Bank v. National State Bank, 10 Bush, 367; Feckheimer v. National Exchange Bank, 79 Va., 80; Delaware, Lackawanna & West. R. Co. v. Oxford Iron Co., 38 N. J. Eq., 340; see Young v. Vough, 23 Id., 325; Evansville National Bank v. Metropolitan National Bank, 2 Biss., 527; In re Bigelow, 2 Bened., 469; Lockwood v. Mechanics' National Bank, 9 R. I., 308; Dunkerson's case, 4 Biss., 323; Pendergast v. Bank of Stockton, 2 Saw., 108; Knight v. Old National Bank, 3 Cliff., 429. The last seven cases mentioned are not in harmony with the others and have been unfavorably criticised on several occasions.

² Feckheimer v. National Exchange Bank, 79 Va., 80.

³ Id.

sold in open market the same as other securities. Although neither in form or character negotiable paper, they approximate to it as nearly as practicable. If we assume that the certificates in question are not different from those in general use by corporations, and the assumption is a safe one, it is easy to see why investments of this character are sought after and relied upon. No better form could be adopted to assure the purchaser that he can buy with safety. He is told, under the seal of the corporation, that the shareholder is entitled to so much stock, which can be transferred on the books of the corporation, in person or by attorney, when the certificates are surrendered, but not otherwise. This is a notification to all persons interested to know that whoever in good faith buys the stock, and produces to the corporation the certificates, regularly assigned, with power to transfer, is entitled to have the stock transferred to him. And the notification goes further, for it assures the holder that the corporation will not transfer the stock to any one not in possession of the certificates.”¹

§ 155. Bank can become purchaser to escape loss.

In interpreting the first clause of this statute, prohibiting banks from making loans or discounts on the security of their own stock, Judge Davis has remarked that “so marked is the policy of Congress on this subject, that it does not allow a bank to become the purchaser or holder of its shares at all, unless absolutely necessary to prevent loss on a debt previously contracted in good faith, and not then for a longer period than six months. It is easy to see, that if the power were given to a bank to loan money on the security of its shares, it would imply also a power to become the owner of those shares, and this Congress intended to guard against.”²

§ 156. Applies to bank as well as individual. Although the section in question forbids loans or discounts by a bank on the security of its own shares of stock, it was contended in the case of an Indiana bank against Lanier that “this inhibition does not extend to the case of deposits made by one bank with another. But a deposit is nothing but a loan of money, and is within both the letter and spirit of the provision. It is well known that country banks keep on deposit in New York, with

¹ *Bank v. Lanier*, 11 Wall., p 377.

² *Bank v. Lanier*, 11 Wall., 369 p. 374.

bankers and merchants, a considerable amount of money for their own convenience, for which they receive more or less of interest. But whether interest be obtained or not, these deposits are, equally with paper discounted over the counter of the bank, loans of money, and the reason of the rule is equally applicable to them.”¹

§ 157. **Right to take stock for past debt.** The right of a bank to take and hold its shares for a debt was decided in *Lee v. Citizens' National Bank*.² W, a director and cashier, was the holder of fifty shares, his certificate therefor containing a blank form of indorsement and power of attorney. In November, 1867, he signed his name to this form and delivered the certificate to a firm, of which he was a member, to be pledged for a loan. It was pledged to B, but as only a portion of the loan was repaid, B sued the firm, obtained judgment, levied on the stock, and it was sold at a sheriff's sale for \$1,600. W, the purchaser, presented the certificate of stock and bill of sale to the bank and demanded a transfer of the same, which was refused. He sold it to Lee, who then demanded a transfer to himself, but this also the bank refused to make. The reason for the refusal was that M, in January, 1868, had transferred the same stock to D, the president of the bank, to secure a debt that M owed to the institution. At the time of transferring the stock to D, it stood on the transfer books of the bank in M's name. D continued to hold the stock until July, 1869, when he paid M's indebtedness to the bank and acquired therefrom whatever right it had in the stock. A by-law provided that its stock should be “transferable only upon the books of the bank, and when stock is transferred, the certificates thereof shall be returned to the bank and canceled and new certificates issued.” The court decided that D must pay \$1,600 to Lee with interest from the time he bought the stock of W, and that after doing this Lee should surrender the certificate of stock to D which he could thereafter hold. Thus the court decided, first, that B acquired a lien paramount to the rights of the bank by M's transfer to him; and again, that, subject to B's rights, the bank did acquire a lien to the stock which it could transfer to D. The soundness of this decision has been questioned, but it was grounded in the first clause of the section which authorizes a bank to purchase

¹ *Bank v. Lanier*, 11 Wall., 469 p. 375.

² 2 Cin., (Ohio) 298.

its shares whenever this may be necessary to prevent a loss on a debt previously contracted in good faith.

§ 158. **If taken as security and sold pledgor cannot recover.** If a loan is made on the security of the shares of the lending bank, and these are sold to pay the debt in accordance with the contract, an action cannot be sustained to recover the money received by the bank for the shares. "While this section," says Field, J., "in terms prohibits a banking association from making a loan upon the security of shares of its own stock, it imposes no penalty, either upon the bank or borrower, if a loan upon such security be made. If, therefore, the prohibition can be urged against the validity of the transaction by any one except the government, it can only be done before the contract is executed, while the security is still subsisting in the hands of the bank. It can then, if at all, be invoked to restrain or defeat the enforcement of the security. When the contract has been executed, the security sold, and the proceeds applied to the payment of the debt, the courts will not interfere with the matter. Both bank and borrower are in such case equally the subjects of legal censure, and they will be left by the courts where they have placed themselves."¹

§ 159. **Meaning of second clause in section.** By the second clause of the statute the sale which the law requires the bank to make of its own stock is a real sale, and not a fictitious one. And when the president and cashier of a national bank, which is the owner of some of its own stock, purchase it and execute their note to the bank for the purchase money, they cannot defend in a suit thereon by the receiver that the purchase was unauthorized, or that their action was simply to avoid a forfeiture of the bank's charter, or was for any other deceptive or illegal purpose.²

§ 160. "The shareholders of every national banking association shall be held individually responsible, equally and ratably, and not one for another, for all contracts, debts, and engagements of such association, to the extent of the amount of their stock therein, at the par value thereof, in addition to the amount invested in such shares; except that shareholders of any banking association now existing under state laws, having not less than

Liability of
sharehold-
ers.
Rev. Stat.
Sec. 5151.

¹ National Bank of Xenia v. Stewart, 107 U. S., 676.

² Bundy v. Jackson, 24 Fed. R., 628.

five millions of dollars of capital actually paid in, and a surplus of twenty per centum on hand, both to be determined by the Comptroller of the Currency, shall be liable only to the amount invested in their shares; and such surplus of twenty per centum shall be kept undiminished, and be in addition to the surplus provided for in this Title; and if at any time there is a deficiency in such surplus of twenty per centum, such association shall not pay any dividends to its shareholders until the deficiency is made good; and in case of such deficiency, the Comptroller of the Currency may compel the association to close its business and wind up its affairs under the provisions of chapter four of this Title.”¹

§ 161. Liable until transfer is made on books. Though a national bank may not be bound to admit a purchaser of its shares “to all the rights and liabilities of the prior holder of such shares,” unless they are transferred to him on the book of the association in the manner prescribed in its by-laws or articles of association, when a certificate of stock is issued to a subsequent purchaser in lieu of the certificate of the prior owner without observing its by-laws relating to the transfer of stock, certainly, so far as creditors are concerned, the holder of the shares will be subject to the liabilities imposed by this section.² A similar view has been expressed by Judge Blodgett, which has been approved by the United States Supreme Court. “Shareholders of a national bank must remain liable until a transfer of their shares is made on the books of the bank; and a transfer of shares after the bank has become insolvent certainly cannot be construed to release the shareholders from liability to the creditors of the bank, for the reason that it would enable the shareholders to wholly escape liability by transferring their stock to irresponsible persons after it became evident that the shares were not only valueless, but that they involved an actual and pending liability for debts of the bank.”³

§ 162. Shareholder until then. No person becomes a shareholder, subject to the liabilities and succeeding to the rights prescribed by the law, unless his name is thus registered on the

¹ Act 1864, Sec. 12.

² *Laing v. Burley*, 101 Ill., 591; *Davis v. Essex Baptist Society*, 44 Conn., p. 585.

³ *Blodgett, J., Irons v. Manufacturers' National Bank*, 17 Fed. R., p. 315.

books of the association. "Until such [registry] the prior holder is the stockholder for all the purposes of the law."¹

§ 163. **In Whitney v. Butler**² A was the owner of shares which were sold for him at a public auction. They were bought by B, who paid the auctioneer for them and received the certificate of stock with a power of attorney for their transfer, which was duly executed in blank. The auctioneer paid the purchase money to A. B was employed by the president of the bank to make the purchase for a customer who had made a deposit in the bank to pay for the stock, and B delivered the certificate and the power of attorney to the president, and received from the bank the money for the purchase. No formal transfer of the stock was made on the bank's transfer book. Not long after this the bank became insolvent, and passed into the control of a receiver, and the stockholders were assessed to meet the bank's debts for the full amount authorized by the statute. Until the happening of this event A knew nothing concerning the purchaser, or the neglect to transfer formally the stock, and had no reason for supposing the transfer had not been made. In an action against A by the receiver to recover the amount of the assessment on the stock, it was decided that A's responsibility ceased after surrendering his certificate to the bank, and the delivery to its president of the power of attorney authorizing him to transfer the stock.

§ 164. **When shareholder cannot escape liability by transfer.** If a shareholder has good reason to apprehend the failure of his bank, and transfers his stock to an irresponsible person for the purpose of escaping liability, the transaction is a fraud, and the transferrer may be held as fully as though the transaction had not happened. Says Blatchford, J., in *Bowden v. Johnson*:³ "As such shareholder [the transferrer] became subject to the individual liability prescribed by the statute. This liability attached to him until, without fraud as against the creditors of the bank, for whose protection the liability was imposed, he should relieve himself from it. He could do so by a *bona fide* transfer of the stock. But where the transferrer, possessed of information showing that there is good ground to apprehend the failure of the bank, colludes and combines, as in this case, with

¹ *Richmond v. Irons*, 121 U. S., 27 p. 58.

² 118 U. S., 655.

³ 107 U. S., 251 p. 261 ; *Bowden v. Santos*, 1 Hughes, 158.

an irresponsible transferee, with the design of substituting the latter in his place, and of thus leaving no one with any ability to respond for the individual liability imposed by the statute, in respect of the shares of stock transferred, the transaction will be decreed to be a fraud on the creditors, and he will be held to the same liability to the creditors as before the transfer." But when stock is sold under the terms of a pledge, says Judge Grason,¹ the sale "is not obnoxious to the charge of having been done in fraud of creditors, although its leading object and purpose might have been, on the part of the pledgee, to avoid liability as a member of the corporation."²

§ 165. **Pledgee is usually liable.** If a person hold stock in pledge and the certificate stands in his name on the bank-book, he is a stockholder and is responsible to the creditors of the bank.³ "Pledgees of stock," says Shipman, J., "who hold the legal title and are stockholders of record are liable, although the pledgor may be the actual owner of the stock. So long as stockholders permit themselves to appear upon the record as stockholders, their personal liability continues. The creditors have a right to rely upon the guarantee of those who continue to hold themselves out as stockholders."⁴ And Grason, J., in speaking for the Supreme Court of Maryland, says that when the stock stands on the books of the bank in the name of the pledgee, "he

¹ *Magruder v. Colston*, 44 Md., 349 p. 358.

² "When a national bank is in a failing condition, a transfer of its shares, even though real and 'out and out,' but made to a person incapable of responding to liability, and for the purpose of obtaining personal immunity, is void. (*National Bank v. Case*, 99 U.S., 628.) Even though the bank be not then in a failing condition, but the stockholder knows there is good ground to apprehend its failure, and he colludes with an irresponsible person for the purpose of substituting the latter in his stead, and thus leaving no one able to respond to the liability imposed by the statute, such substitution will be void as to the bank, and he will be held liable. (*Bowden v. Johnson*, 107 U.S., 251). The object of the statute is to get at the real owner of the shares, and the courts in construing it uncover all his disguises, so that if his name has never been on the transfer-book, and his stock stands in the name of another by his procurement, he will yet be chargeable as a stockholder with the statutory liabilities" (*Davis v. Stevens*, 17 Blatchf., 259), *Manning, J., Lesassier & Binder v. Kennedy*, 36 La. Ann., 539 p. 542.

³ *Magruder v. Colston*, 44 Md., 349; *Moore & Janney v. Jones*, 3 Woods, 53; *Bowdell v. Farmers & Merchants' Nat. Bank*, 14 B. Mag., 387; *Cole v. Walker*, 31 Iowa, 344.

⁴ *Davis v. Essex Baptist Society*, 44 Conn., p. 585.

is thus held out to the public as shareholder, and persons dealing with the bank, have no means of knowing the nature of the contract under which he holds the stock, and have a right to presume, and are led to believe that he is the absolute owner of it, and it is but fair to presume that they deal with the bank upon the faith and credit of parties thus appearing as stockholders."¹

§ 166. Until the re-transfer is made on the books.

This liability continues even if the loan be repaid, and the stock certificate is surrendered with an executed power of attorney for transferring it so long as the record on the books remain unchanged.² In this case Giles, J., said: "By the 12th section of the Act of 1874 it is provided that every one becoming a shareholder by such transfer shall, in proportion to his shares, succeed to all the rights and liabilities of the prior holder of such shares, and by the said section it is also provided that the shares shall be transferred on the books of the bank. Now, it was the duty of the defendant, which made the loan on the security of twenty shares of another bank that failed, having taken an assignment on the books of the said bank of these twenty shares, where its loan was repaid to it, to have seen that these shares were transferred back to the [borrower] on said books, and having failed to do so before the bank was closed by the Comptroller, the receiver was authorized to regard it as the legal owner of these shares."

§ 167. But not if he puts it in the name of an irresponsible trustee. But a pledgee who holds national bank stock as security for a loan in good faith, in the name of an irresponsible trustee, for the avowed purpose of avoiding individual liability as a shareholder, and who exercises none of a shareholder's rights, will not incur liability to the creditors of the bank in the event of its failure.³ Said Mr. Chief Justice Waite: "It is well settled that one who allows himself to appear on the books of a national bank as an owner of its stock is liable to creditors as a shareholder, whether he be the absolute owner or a pledgee only, and that, if a registered owner, acting in bad faith, transfers his stock in a failing bank to an irresponsible person, for the purpose of escaping liability, or if his transfer is colorable only, the

¹ *Magruder v. Colston*, 44 Md., p. 356; *Hale v. Walker*, 31 Iowa, 344.

² *Bowdell v. Farmers & Merchants' Nat. Bank*, 14 Bank. Mag., 387.

³ *Anderson v. Philadelphia Warehouse Co.*, 111 U. S., 479, affg 4 Fed. R., 130.

transaction is void as to creditors.¹ It is also undoubtedly true, that the beneficial owner of stock registered in the name of an irresponsible person may, under some circumstances, be liable to creditors as the real shareholder, but it has never, to our knowledge, been held that a mere pledgee of stock is chargeable where he is not registered as owner.”

§ 168. **A transfer by owner to escape liability is not valid.** A purchaser, though, who should transfer his stock to an irresponsible person to conceal his ownership and escape individual liability would nevertheless remain liable. In *Davis v. Stevens*,² which was tried by Chief Justice Waite, he said that “the point to be decided now is, whether, in an action at law, by a receiver of the bank, the real owner of stock in a national bank, standing by his procurement, in the name of another, and never having been in his own name on the books, can be charged, as a shareholder, with the statutory liability for debts.” Referring to the sections which cover the subject he continued: “Under these provisions of the law it is contended that the registered shareholders alone can be charged with the statutory liability, and that an assignee of stock does not make himself responsible unless he accepts an actual transfer in his own name on the books. As has just been seen, the registered holder is liable. By holding himself out to the world as owner, as he does when he permits his name to appear to that effect on the books kept for the information of shareholders and creditors, he estops himself from denying that he is in fact what he represents himself to be. The question still remains, however, whether the person for whom the registered owner holds the stock, if actually the owner, may not also be liable.” And the Chief Justice concluded that he could be held.³

§ 169. **Effect of secret trust.** If A, a national bank shareholder, should place some of his shares in the name of B, to hold for him under a secret declaration of trust, and permit him to be elected a director, and B should take the oath required by the national banking law that he was the *bona fide* owner of such stock, and, furthermore, A should declare that one of his objects

¹ *National Bank v. Case*, 99 U. S., 628; *Bowden v. Johnson*, 107 U. S., 251.

² 17 Blatchf., 259.

³ *Case v. Small*, 4 Woods, 78 S. C., 10 Fed. R., 722.

in transferring them was to give B credit and aid him in business, B could not deny his ownership to a creditor who might trust him.¹

§ 170. The owner on stock book is *prima facie* owner.

“Where the name of an individual appears on the stock book of a corporation as a stockholder, the *prima facie* presumption is that he is the owner of the stock, in a case where there is nothing to rebut that presumption; and in an action against him as a stockholder the burden of proving that he is not a stockholder, or of rebutting that presumption, is cast upon the defendant.”²

§ 171. Married woman is liable. The liability imposed by this statute may be enforced against a married woman. In *Hobart v. Johnson*³ Judge Blatchford said that “it must be assumed either that the defendant had a separate estate, or contracted with a view to create, by owning the stock, a separate estate. In either view, the contract was for her benefit as the holder of a separate estate. Under such circumstances, by way of estoppel, she will not be allowed to claim and enjoy, as regards the bank, and creditors, and her co-stockholders, the benefit of her position as a shareholder, and then repudiate the statutory obligation attached to it.” In the case of *Keyser v. Jane C. Hitz*,⁴ her husband transferred to her stock of a savings bank which was converted into a national bank. Having failed, the stockholders were assessed to the full amount of their stock, but she endeavored to evade liability on the ground that she was married. The court did not sustain this view. Moreover, as the liability is imposed by statute, and not by the common law, a suit to recover her assessment may be brought against her without joining her husband in the process.

§ 172. The liability of a shareholder also “survives as against his personal representatives.”⁵

§ 173. Liability ceases when bank liquidates. The individual liability “must be restricted in its meaning to such contracts, debts and engagements as have been duly contracted in the ordinary course of its business.” That ceases when a bank goes

¹ *Young v. Vough*, 23 N. J. Eq., 325.

² *Clifford, J., Turnbull v. Payson*, 95 U. S., p. 421.

³ 19 Blatchf., 359 p. 362.

⁴ 2 Mackey, 473.

⁵ *Richmond v. Irons*, 121 U. S., 27 p. 56.

into liquidation; when this happens, there is no authority on the part of the officers of a bank to transact any business in its name which will bind its shareholders, "except that which is implied in the duty of liquidation, unless such authority had been expressly conferred by the shareholders."¹

§ 174. **Also after Statute of Limitations has run.** A stockholder's liability for contributions ceases after the Statute of Limitations has run for the full period. Thus, a receiver of a bank was appointed in 1866. Ten years afterward the Comptroller directed the enforcement of the individual liability of the stockholders. As this proceeding was ordered more than six years after their liability occurred, they could not be held.²

§ 175. **Liability is several and equal.** The liability of each stockholder is several and equal. Says Judge Blatchford:³ "The stockholder is to be individually liable, to the extent of the amount of his stock at its par value, in addition to amount of the stock. The limit in amount or extent is the par value of his stock. Within this limit each stockholder is to be liable equally and ratably; that is, no one is to be assessed a larger percentage than any other one on the par value of his stock, and, when one is assessed a given percentage, every other one shall be assessed a like percentage. Each is to be liable in respect only of his own stock, and because he is a stockholder, and up to the full par value of his stock; but he is not to be liable in respect of the stock of any other stockholder, or because any other person is a stockholder, or beyond the full par value of his stock. This is a several liability. The stockholders are not jointly liable. There is no contribution among them provided for whereby one of them has any right to call any other one directly to account in contribution in respect of any sum paid in discharge of the statutory liability."⁴ So, too, has Judge Swayne remarked,⁵ that "by the common law, the individual property of the stockholders was not liable for the debts of the corporation under any circumstances. Here the liability exists by virtue of the statute and the assent of the corporators to its provisions, given by the contract which they

¹ *Richmond v. Irons*, 121 U. S., 27 p. 60.

² *Price v. Yates*, 7 Week. Notes, 51.

³ *Stanton v. Wilkeson*, 8 Bened., 357 p. 362.

⁴ *Kennedy v. Gibson*, 8 Wall., 498; *Sanger v. Upton*, 91 U. S., 56.

⁵ *United States v. Knox*, 102 U. S., 422 p. 424.

entered into with Congress in accepting the charter. With respect to the character of that liability, it is entirely clear, from the language employed in creating it, that it is several and cannot be made joint, and that the shareholders were not intended to be put in the relation of guarantors or sureties, 'one for another,' as to the amount which each might be required to pay."

§ 176. **Receiver on order of Comptroller can sue shareholder.** The receiver is authorized to sue either in his own name or in the name of the bank, to enforce the individual liability of the stockholders. The Comptroller cannot bring the suit.² "The Comptroller of the Currency, by virtue of the National Banking Law, in winding up an insolvent bank, is vested with authority to determine when a deficiency of assets exists, so that the individual liability of the stockholders may be enforced. This liability is conditional, but the Comptroller, in the exercise of a judicial discretion, decides upon the data before him, when 'it is necessary' to compel contributions from stockholders to pay the debts of the bank. The law clothes him with this authority, and no appeal lies from his decision by a stockholder.³ He appoints a receiver, and resorts to the ultimate remedy whenever, in his judgment, the condition of the bank requires its enforcement. A more speedy settlement of the affairs of an insolvent bank is thus obtained."⁴ The remarks of Judge Swayne⁵ are worth adding: "It is for the Comptroller to decide when it is necessary to institute proceedings against the stockholders to enforce their personal liability, and whether the whole or a part, and if only a part, how much, shall be collected. These questions are referred to his judgment and discretion, and his de-

¹ "This obligation of the stockholder is fixed when he becomes a member of the corporation by taking stock therein, and is several, not joint. There is no necessity for invoking the aid of a court of chancery to determine the sum each stockholder must pay, for that is regulated by the number of shares of stock owned. When the Comptroller declares and orders an assessment, the precise amount each stockholder must contribute is a certain exact sum. A suit at law would seem to be the suitable proceeding to collect the assessment." Nelson, J., *Bailey v. Sawyer*, 4 Dill., 463.

² *Stanton v. Wilkeson*, 8 Bened., 357; *Kennedy v. Gibson*, 8 Wall., 498.

³ The order of the Comptroller prescribing to what extent the individual liability of the stockholders of an insolvent national bank shall be enforced is conclusive, *National Bank v. Case*, 99 U. S., 628.

⁴ Nelson, J., *Bailey v. Sawyer*, 4 Dill., 463.

⁵ *Kennedy v. Gibson*, 8 Wall., 498 p. 505.

termination is conclusive. The stockholders cannot contravert it. It is not to be questioned in the litigation that may ensue. He may make it at such time as he may deem proper, and upon such data as shall be satisfactory to him.”¹

§ 177. **Federal courts have jurisdiction regardless of amount.** A receiver is an agent and officer of the United States, and actions brought by him to recover assessments duly laid on stockholders and necessary to provide for the payment of the debts of the bank are suits at common law, and the circuit court of the United States has concurrent jurisdiction with the district court without regard to the amount sought to be recovered.²

§ 178. **Mode of proceeding.** Concerning the mode of proceeding against stockholders by the receiver, Judge Swayne has remarked: “Where the whole amount is sought to be recovered the proceeding must be at law. Where less is required the proceeding may be in equity, and in such case an interlocutory decree may be taken for contribution, and the case may stand over for the further action of the court—if such action should subsequently prove to be necessary—until the full amount of the liability is exhausted. It would be attended with injurious consequences to forbid action against the stockholders until the precise amount necessary to be collected shall be formally ascertained. This would greatly protract the final settlement, and might be attended with large losses by insolvency and otherwise in the intervening time. The amount must depend in part upon the solvency of the debtors and the validity of the claims. Time will be consumed in the application of these tests, and the results in many cases cannot be foreseen. The same remarks apply to the enforced collections from the stockholders. A speedy adjustment is necessary to the efficiency and utility of the law; the interests of the creditors require it, and it was the obvious policy and purpose of Congress to give it. If too much be collected, it is provided by the statute that any surplus which may remain after satisfying all demands against the association shall be paid over to the stockholders. It is better they should pay more than may prove to be needed than that the evils of delay should be encoun-

¹ *Casey v. Galli*, 94 U. S., 673.

² *Price v. Abbott*, 17 Fed. R., 506; *Platt v. Beach*, 2 Bened., 303; *Stanton v. Wilkeson*, 8 Bened., 357; *Bank v. Kennedy*, 17 Wall., 19; *United States v. Hartwell*, 6 Wall., 385.

tered. When contribution only is sought, all the stockholders who can be reached by the process of the court may be joined in the suit. It is no objection that there are others beyond the jurisdiction of the court who cannot for that reason be made co-defendants.”¹

§ 179. **How liability is fixed.** In fixing “the amount of the separate liability of each of the shareholders, it is necessary to ascertain, (1) the whole amount of the par value of all the stock held by all the shareholders; (2) the amount of the deficit to be paid after exhausting all the assets of the bank; (3) then to apply the rule that each shareholder shall contribute such sum as will bear the same proportion to the whole amount of the deficit as his stock bears to the whole amount of the capital stock of the bank at its par value. There is a limitation of this liability. It cannot in the aggregate exceed the entire amount of the par value of all the stock.”²

§ 180. **Until Comptroller’s order assessment is contingent.** Until the order of the Comptroller the shareholders’ liability for an assessment is contingent. “He ascertains and decides how much shall be collected, and until his decision the receiver has no power to enforce a liability against the stockholders arising out of their stock.”³

§ 181. **Receiver must aver that proceeding is necessary.** The receiver, therefore, must aver in his bill that the Comptroller has decided that such a proceeding is necessary. This action, remarks Judge Swayne, is indispensable whenever the personal liability of the stockholders is sought to be enforced, and must precede the institution of the suit by the receiver. “The fact must be distinctly averred in all such cases, and if put in issue must be proved.”⁴ But a letter from the Comptroller addressed to the receiver, directing him to enforce such a suit, is sufficient evidence of the Comptroller’s decision in the matter before beginning the same.⁵

§ 182. **He cannot maintain suit against shareholder who sold in good faith.** A receiver cannot maintain a suit

¹ Kennedy v. Gibson, 8 Wall., 498 p. 505.

² Swayne, J., United States v. Knox, 102 U. S., 422 p. 425.

³ Davis v. Weed, 44 Conn., p. 579.

⁴ Kennedy v. Gibson, 8 Wall., 498 p. 505; Strong v. Southworth, 8 Bened., 331; Bailey v. Sawyer, 4 Dill., 463; Stanton v. Wilkeson, 8 Bened., 357.

⁵ Bowden v. Johnson, 107 U. S., 251.

against a person for contributions who has sold his shares in good faith, and received his pay and transferred his certificate of stock, though the transfer on the stock register of the bank may not have been completed. Thus A, a stockholder, without intending to evade his responsibility, sold his shares to a broker, to whom he delivered his certificate and a power to transfer them, leaving blanks for the names of the attorney and transferee. The broker sold them to B, the president of the bank, who gave his individual check in payment and received the certificate and power. By B's direction, a bookkeeper of the bank inserted his own name as attorney, and transferred the stock to B as "trustee" on the stock register. The entries in the stock ledger showed, and so did other books of the bank, that B purchased the stock for it and reimbursed himself with its funds, and the bookkeeper knew these things. In a suit by the receiver to compel B to retransfer the shares, and A to repay the price and to be declared a stockholder, it was held that as the bookkeeper was the agent of the bank, his knowledge of the transaction could not be imputed to A, and that the suit could not be maintained.¹

§ 183. Stock certificates are basis of assessment. "In ordering an assessment, the stock certificates and the stock ledger are the basis upon which the Comptroller of the Currency, in the absence of fraud or mistake, must rely. It is impossible for him to ascertain the equities of each stockholder, and if any stockholder could relieve himself from the consequence of his laches by showing that another unknown person was the owner of the stock, creditors might have payment of their debts indefinitely postponed, and an unjust burden might be imposed upon the acknowledged stockholders. Some definite and conclusive means of information as to the ownership of stock for the purposes of assessment ought to be furnished to creditors, to the receiver, and to the Comptroller. This information should be found, in the absence of fraud or mistake, in the certificates of stock, and in the stock books of the bank."²

§ 184. Shareholder cannot deny validity of bank. Nor can a stockholder, when thus sued, deny the existence or val-

¹ Johnson v. Laffin, 103 U. S., 800; see National Bank v. Watson town Bank, 105 U. S., 217.

² Shipman, J., Davis v. Essex Baptist Society, 44 Conn., p. 585.

idity of the corporation. Says Judge Swayne in *Casey v. Galli*:¹ "Where a shareholder of a corporation is called upon to respond to a liability as such, and where a party has contracted with a corporation, and is sued upon the contract, neither is permitted to deny the existence or the legal validity of such corporation. To hold otherwise would be contrary to the plainest principles of reason and of good faith, and involve a mockery of justice. Parties must take the consequences of the position they assume. They are estopped to deny the reality of the state of things which they have made appear to exist, and upon which others have been led to rely. Sound ethics require that the apparent, in its effects and consequences, should be as if it were real, and the law properly so regards it."²

§ 185. **He cannot offset claim due from bank.** If a shareholder happen to be a creditor of the bank, he cannot cancel or diminish his assessment by offsetting his individual claim against the institution.³

§ 186. **Liability for interest on bank's debts.** The shareholder's liability for the debts of his bank is also extended to the interest accruing on them so far as the bank would have been liable, though not beyond the statutory limits. Says Matthews, J.: "As the liability of the shareholder is for the contracts, debts, and engagements of the bank, we see no reason to deny to the creditor as against the shareholder the same right to recover interest which, according to the nature of the contract or debt, would exist as against the bank itself; of course, not in excess of the maximum liability as fixed by the statute. In the case of book accounts in favor of depositors * * interest would begin to accrue as against the bank, from the date of its suspension. The act of going into liquidation dispenses with the necessity of any demand on the part of the creditors, and it follows that interest should be computed upon the amounts then due as against the shareholders to the time of payment."⁴

§ 187. **Interest on assessment.** Whenever the Comptroller demands a contribution from stockholders, the sum is due and payable and bears interest from the date fixed by him. "Oth-

¹ 94 U. S., 673 p. 680.

² *Keyser v. Hitz*, 2 Mackey, 473; *Wheelock v. Kost*, 77 Ill., 296.

³ *Hobart v. Gould*, 8 Fed. R., 57. See § 348.

⁴ *Richmond v. Irons*, 121 U. S., 27 p. 64.

erwise there would be no motive to pay promptly, and no equality between those who should pay then and those who should pay at the end of a protracted litigation."¹

§ 188. **Insolvency of one shareholder does not increase liability of others.** "The insolvency of one stockholder, or his being beyond the jurisdiction of the court, does not in any wise affect the liability of another; and if the bank itself, in such case, holds any of its stock, it is regarded in all respects as if such stock were in the hands of a natural person, and the extent of the several liability of the other stockholders is computed accordingly."²

§ 189. **Receiver's power to ascertain whether transfer is valid.** Not only can the receiver enforce the liability of a shareholder by an action at law, he can also bring a bill in equity against the transferrer and transferee of the shares of the failed bank whenever a discovery of the facts relating to the transaction is sought, as well as relief in the case of a valid transfer, which is only voidable at the election of the receiver.³

§ 190. **Delano v. Butler.*** Some very interesting questions concerning the liability of the shareholders of the Pacific National Bank of Boston were settled in a suit by the receiver against them. In September, 1881, A owned thirty shares of stock in the bank, which at that time had a capital of \$500,000, but possessed the authority to have as much more. In that month the directors voted to increase the capital to \$1,000,000, the shareholders having the right to take the new stock at par. A subscribed for thirty shares, paid for it within three days and received his certificate. The amount of the increased capital however was only \$461,300, but A did not know of the deficiency until after paying for his shares. In November the bank became insolvent and was put in charge of a national examiner. The next month the directors cancelled the increase of stock above \$461,300, and requested the Comptroller to issue a certificate for the increase, as thus reduced, which he did. No action was taken by the stockholders either in increasing or decreasing the capital. The Comp-

¹ Casey v. Galli, 94 U. S., 673 p. 677.

² United States v. Knox, 102 U. S., 422 p. 425; Crease v. Babcock, 10 Met., 525.

³ Bowden v. Johnson, 107 U. S., 251.

⁴ 118 U. S., 634.

troller, under the authority conferred by the 5205th section, required the bank to make an assessment of 100 per cent. on its shareholders to pay the deficiency in the capital stock. At the annual meeting in January the stockholders voted to levy the assessment and the Comptroller accordingly permitted the directors to resume control of the bank. A paid the assessment on sixty shares. Finally on the 20th of May the bank ceased to do business and the stockholders voted to go into liquidation. The Comptroller appointed a receiver and in November, 1882, made an assessment of 100 per cent on the stockholders.¹ A having declined to pay the assessment on his sixty shares, and having been sued therefor, the court held: 1st, That the increase of the capital stock to \$961,300 was valid; 2d, That this increase was binding on A for his sixty shares; 3d, That the payments made in January, 1882, could not be applied to discharge the assessments made by the Comptroller on the final liquidation of the bank; and 4th, That the payment was not made by A under such a mistake that equity would relieve him from paying the final assessment.

§ 191. **Eaton v. Pacific National Bank.**² By the articles of association a national bank could increase its capital as provided by section 5142, and each stockholder had the privilege of subscribing for the increase in proportion to the number of shares already held by him. The directors also had the power to provide for an increase of capital and to regulate the manner in which it should be made. A by-law of the bank provided that when an increase of stock should be determined, the board of directors should notify the stockholders and cause a subscription to be opened for the same; and that if any stockholder failed to subscribe for his proportion within a reasonable time, which should be stated in the notice, the directors might determine what disposition should be made of the privilege of subscribing for the new stock. While these articles and this by-law were in force, the directors voted to double the capital stock and a notice was sent

¹ Under Sec. 5151.

² 144 Mass., 260. Judge Field said that the question decided here was suggested but not decided in *Delano v. Butler*, 118 U. S., 634. "When this action was brought the bank was not in the hands of a receiver, and the receiver afterwards appointed has not formally intervened or appeared; but it was understood at the argument that the action was defended by him and that he desired that it should be prosecuted for the purpose of determining the liability of the bank."

to the stockholders accordingly, which also stated when the subscriptions for the new stock were payable. No subscription books were opened, but A, a stockholder, who held forty shares, paid the bank \$4,000 and took a receipt which stated that this sum was received "on account of subscription to new stock." The Comptroller of the Currency did not certify his approval of this increase of the capital stock, and the whole amount of the increase was not paid. The bank suspended payment and a bank examiner was placed in charge of the bank by the Comptroller and he took possession of all its books and assets. While this state of things continued the directors met and passed a vote which, after reciting the former vote, the amount paid in and the amount not paid in, declared that the latter sum be cancelled and be deducted from the capital stock, and that the paid-up capital stock amounted to a certain sum, which was equal to the former capital and the amount paid in under the former vote. The Comptroller, receiving notice of this vote, issued a certificate that the capital stock was increased by the sum which had been thus paid. On the same day the Comptroller notified the bank that as the entire capital stock was lost, an assessment of one hundred per cent. was required to make good the deficiency. After this the bank made out a certificate for forty shares in the so-called increased capital, and A was registered in the stock register of the bank as the owner of forty shares. No notice was given to A of the last vote or of the existence of the certificate, and he never assented to any change in the proposed increase of the capital stock, but demanded back the money paid by him. Subsequently, the bank was permitted to resume business. It was held that A could maintain an action against the bank to recover the \$4,000 and interest from the time of the demand.

How creditor can proceed by statute.

§ 192. In 1876 Congress further enacted "that when any national banking association shall have gone into liquidation under the provisions of section five thousand two hundred and twenty of said statutes, the individual liability of the shareholders provided for by section fifty-one hundred and fifty-one of said statutes may be enforced by any creditor of such association, by bill in equity, in the nature of a creditor's bill, brought by such creditor on behalf of himself and of all other creditors of the association, against the shareholders thereof, in any court of the United States having original jurisdiction in equity for the dis-

trict in which such association may have been located or established.”¹

§ 193. **Meaning of Statute.** This Act did not create any new liability. It is not retroactive, nor creative of rights against shareholders which did not exist before its passage. “If any construction is to be given to this Act it is that of limiting the tribunal in which proceedings are to be instituted for enforcing the stockholders’ liability to a United States court, instead of allowing creditors to resort to any competent tribunal with equity power.”²

§ 194. **Proceedings before Statute was passed.** In *Wheelock v. Kost*,³ such a bill was maintained before the enactment of the Statute of 1876. In that case Wheelock loaned money to a bank and made and delivered to it his promissory note, partly as an accommodation, to be held among its assets. It was agreed that fifty shares of stock in the bank should be issued to him as collateral security for his loan and as an indemnity against liability on his note that was held by the bank. The shares were, in truth, owed to him, the certificates were received and also semi-annual dividends. “Whatever relation,” says the court, “he may have sustained to the corporators of the bank, it seems clear that, as to its creditors, he occupied the position of a stockholder, and must bear all the burdens that relation imposed. The stock had in fact been transferred to him; it stood in his name as owner, and he availed of the dividends it earned. Having voluntarily assumed the relation of stockholder, it makes no difference he may have done it with a view to assist the bank in its credit or otherwise. The legal title to the stock was in [him] by his own procurement, although the equitable title may have been in other parties; but it would be a singular doctrine to hold that the creditor should seek out the equitable owner against whom to enforce his claim. Primarily, he may proceed against the party in whom is the legal title to the stock. Where shares of a stock in a banking incorporation have been hypothecated, and placed in the name of the transferee, he will be subjected to all the liabilities of ordinary owners. It is for the reason the property is in his name, and the legal ownership appears to be in him.”

¹ Act June 30, 19 Stat. at Large, 44 C. 1 S. Ch. 156, Sec. 2.,

² *Irons v. Manufacturers’ National Bank*, 17 Fed. R., 308 p. 313. See 6 Biss., 301.

³ 77 Ill., 296 p. 298.

And we suppose that the liability of the legal holder is the same whatever may be the form of proceeding against him, whether by a bill brought by the creditors or a suit or bill brought by the receiver.

§ 195. **Requirements of bill. Amendments.** The bill need not state that the complainants have filed it on behalf of themselves and all other creditors, for the law will give that effect to it.¹ And if Congress should grant enlarged powers to a court having jurisdiction of such a bill, the party who filed it could amend with the view of getting the benefit of the new legislation.² The amendments, however, must be germane to the original bill. In *Richmond v. Irons*,³ Judge Matthews quoted with approval the remarks of the court in *Hardin v. Boyd*:⁴ "Their allowance must, at every stage of the cause, rest in the discretion of the court; and that discretion must depend largely on the special circumstances of each case. It may be said, generally, that in passing upon application to amend, the ends of justice should never be sacrificed to mere form, or by too rigid an adherence to technical rules of practice. Undoubtedly great caution should be exercised where the application comes after the litigation has continued for some time, or when the granting of it would cause serious inconvenience or expense to the opposite side. And an amendment should rarely, if ever, be permitted where it would materially change the very substance of the case made by the bill, and to which the parties have directed their proofs." In the *Irons* case the amended bill was filed twenty months after the original, and consisted of allegations to enforce the individual liability of shareholders, while the original bill was for ascertaining the assets of the bank and their distribution among the creditors.

§ 196. **When creditor can file a bill.** With respect to the time when creditors can file a bill, it was decided in *Richmond v. Irons*,⁵ that an "amended bill is to be considered from the date of its filing as a bill on behalf of all the creditors of the bank who should come in under it and prove their claims. When any creditor appeared during the progress of the cause to set up and es-

¹ *Irons v. Manufacturers' National Bank*, 17 Fed. R., 308.

² *Harvey v. Lord*, 11 Biss., 144; *Richmond v. Irons*, 121 U. S., 27.

³ 121 U. S., 27.

⁴ 113 U. S., 756 p. 761.

⁵ 121 U. S., p. 52.

tablish his claim, it was necessary for him to prove that at the time of filing the bill he was a creditor of the bank; any defense which existed at that time to his claim, either to diminish or defeat it, might be interposed either before the master or on the hearing to the court. The creditor, having established his claim, became entitled to the benefit of the proceeding as virtually a party complainant from the beginning, and the time that had elapsed from the filing of the bill to the proof of his claim would not be counted as a part of the time relied on to bar the creditor's right to sue the stockholders. In other words, if he proves himself to be a creditor with a valid claim against the bank, he becomes a complainant by relation to the time of the filing of the bill."

§ 197. Receiver cannot maintain an action at same time. When a creditor's bill has been filed against shareholders to enforce their liability, the receiver cannot maintain an action against them to enforce the same liability.¹ "It cannot, I think, be maintained that Congress intended by the Act of June 30, 1876, to leave the Comptroller any authority over the assets of a national bank, which had gone into voluntary liquidation under section 5220, after a court of competent jurisdiction had, under a creditor's bill, appointed a receiver, and taken possession of the assets, and initiated proceedings to enforce the liability of stockholders, because that would bring about a conflict between the officers of the court and those of the Comptroller. The grant of power to enforce the liability of the stockholders is plenary and ample, and I see no need for any function of the Comptroller when the affairs of the bank are once properly in the hands of the court."²

§ 198. Creditor must prove insolvency of bank. Whenever creditors proceed against the stockholders of any insolvent bank, its insolvency must be proved. A return of *nulla bona* made by a sheriff on an execution issued against the property of the bank would be sufficient evidence.³

§ 199. Only creditors who have proved claims can recover. "No person is entitled to recover as a creditor who does not come forward to present his claim."⁴

¹ Harvey v. Lord, 11 Biss., 144.

² Blodgett, J., Harvey v. Lord, 11 Biss., 144 p. 147.

³ Wheelock v. Kost, 77 Ill., 296. ⁴ Richmond v. Irons, 121 U. S., p. 66.

§ 200. **Decree fixing shareholder's liability.** The decree fixing the liability of a shareholder should be made on the basis which his shares bear to the whole stock. Thus the assessment in *Wheelock v. Kost*¹ was made on the basis of the entire stock of the bank which consisted of one thousand shares. Wheelock was the owner of fifty of them. Consequently he was charged only "with his just proportion of the debts of the bank in proportion to the number of shares of stock standing in his name."

§ 201. **Creditor can also sue bank for claims due himself.** If the creditor of a bank in voluntary liquidation should file a bill to enforce the individual liability of its shareholders, this would not prevent him from suing the institution for a debt owing to himself.²

§ 202. **Payment of receiver.** The expenses of a receiver who is appointed under a creditor's bill, but who is not needed by them to enforce the liability of the shareholders, cannot be charged on them as a part of their statutory liability. These must be borne by the creditors at whose instance he was appointed.³

§ 203. **When shareholders can recover of directors.** Whenever shareholders have been compelled to contribute they may maintain an action against the directors to recover for their loss occasioned by negligence and misconduct, provided the corporation or its receiver refuses to bring such an action, or the Comptroller to sanction it.⁴ Moreover, it can be brought in a state court.⁵

Trustees are
not personally
liable.
Rev. Stat.
Sec 5152.

§ 204. "Persons holding stock as executors, administrators, guardians, or trustees, shall not be personally subject to any liabilities as stockholders; but the estates and funds in their hands shall be liable in like manner and to the same extent as the testator, intestate, ward, or person interested in such trust funds would be, if living and competent to act and hold the stock in his own name."⁶

¹ 77 Ill., 296.

² *National Bank v. Insurance Company*, 104 U. S., 54.

³ *Richmond v. Irons*, 121 U. S., 27.

⁴ *Nelson v. Burrows*, 9 Abb. N. Cases, 280.

⁵ *Id.*

⁶ Act 1864, Sec. 63.

§ 205. **Meaning of section.** The principal object of this section, says Judge Shipman, "was to prevent a personal liability from running against executors, administrators, trustees or guardians who had purchased as trustees, or to whom had been transferred in their names as trustees national bank stocks for the benefit of the trust estates. * * The main object of the section was to prevent personal judgments being rendered against such persons in whom the stock stood on the books of the bank as trustees."¹ The section was not intended "to affect the liability for assessments of estates in process of settlement."²

§ 206. **Liability of deceased shareholder's estate.** The liability of a deceased shareholder's estate to an assessment for the debts of a bank has been considered by Shipman, J., in *Davis v. Weed*.³ In this case the stockholder, W, died in January, 1871, his estate was duly settled, and a final distribution of his property was made. The bank failed in December of that year, but no receiver was appointed until January, 1877. The Comptroller having made an assessment on those who were stockholders at the time the bank failed, which W's administrator refused to pay, the receiver sued him in that capacity therefor. It was decided that the estate must pay the assessment. "When the stockholder dies his estate becomes burdened with the same contract or agreement which the dead man had assumed, and so long as it, through the executor or administrator, holds the stock as the property of the estate, and the stock has not been transferred on the books of the bank, and the liability has not been discharged by some act which shows that the new stockholder has taken the place of the old one, the contract liability still adheres to the estate."⁴

§ 207. **How long may estate be held.** For how long a period may an estate be held regardless of the operation of the Statute of Limitations? In *Davis v. Weed*,⁵ Judge Shipman said that the liability imposed by this section "rested upon the stock and was a part of the contingent liability of the estate, at least until it was transferred to some other person by a transfer free from fraud."⁶

¹ *Davis v. Weed*, 44 Conn., p. 581.

² *Id.*

³ 44 Conn.. 569.

⁴ *Id.*, p. 581.

⁵ *Id.*

⁶ The court cited *Corning v. McCullough*, 1 N. Y., 47; *Bailey v. Hollister*, 26 Id., 112; *Lowry v. Inman*, 46 Id., 119; *Hawthorne v. Calef*, 2 Wall., p. 22; *Gray v. Coffin*, 9 Cush., 192.

§ 208. **Witters v. Sowles.**¹ B was the owner of four hundred and fifty shares in a national bank. In his will he made bequests to C, D, and others, and also to his wife, beside making her residuary legatee; and appointed S executor. He died in 1876. Four years afterward his wife died leaving a will with the same bequests, except that her adopted daughter, Mrs. S, the wife of the executor, was made residuary legatee. S was also executor of her will. On the 12th of March, 1881, four hundred of the shares were transferred by decree of court to Mrs. S, and were credited to her on the stock ledger and charged to the stock account of B. On the 7th of April, 1884, the bank failed, and the receiver sought to charge the assets of the estate of B and Mrs. S *as legatee* with an assessment on four hundred and thirty shares, no question having been raised concerning the validity of the transfer of the other twenty that had been owned by B. The receiver claimed that the assets of the estate which had gone to the legatees in satisfaction of their legacies were liable for the assessment; they, on the other hand, claimed that only the assets in the possession of the executor were liable. Judge Wheeler, before whom the case was tried, remarked that "the testator did not become liable on account of the stock, except for such debts, contracts, and engagements as the bank became liable for during his lifetime. The ownership of the stock would not of itself create any, not even a contingent liability; but ownership of the stock, and creation of a liability by the bank together would create a liability of the shareholder contingent upon the discharge by the bank of its liability. Both are necessary to the creation of a contingent claim against a shareholder or his estate. If such a claim had arisen against the estate, it could be enforced against the legatees and devisees to the extent to which they have received assets; not by bringing the assets back into the hands of the executor, but by proceeding directly against those who have received them. None of the liabilities of the bank to meet which this assessment is made, are shown or claimed to have been incurred during the life of the testator. Therefore this is not a contingent claim for which the assets can be pursued under the laws of the state relating to such claims. The statute of the United States provides that an executor shall not be personally subject to any liability as a stockholder, but that the estate and funds in his hands shall be liable in like man-

¹ 32 Fed. R., 130 p. 137.

ner, and to the same extent, that the testator would be if living. So far as appears or is claimed, all the assets of the estate in the hands of those sought to be charged for them were received before any of the liabilities of the bank now in question were created, and most of them several years before. * * The meaning of this statute seems to be that such estates and funds as an executor or administrator has in his hands, at the time when the liability attaches, are liable in like manner as the the testator would be if living at that time, and having in his hands the stock and other property. * * This case is very different in this respect from *Davis v. Weed*.¹ There the liability attached before letters testamentary were granted, if not before the death of the testator, and therefore it was impressed upon all the assets, and would follow them into the hands of the devisees and legatees everywhere. * * The statute appears to contemplate the stockholders as they are at the time of the incurring of the liability, and to hold them responsible equally and ratably, and not one for another, as they stood then. Each stands by himself as he is at that time, solvent or insolvent, and, if he is an executor or administrator, the estate then in his hands, adequate or inadequate, and that only, is holden. When these devisees and legatees received their shares of the estate of the testator, the bank was apparently, and, in fact, so far as is shown or claimed, amply solvent, and there was nothing in that direction then to prevent them from taking a clear title, and the law does not appear to be such as to make what happened afterwards, in which they had no part, disturb their title." The receiver therefore failed to recover of Mrs. S as legatee, but he was not thereby prevented from proceeding against her as owner of the stock like any other owner.

Mrs. S, however, was liable on shares received in payment of a legacy of \$25,000 at agreed prices after the bank failed. "The statutes of the United States provide," said Judge Wheeler, "that the estates and funds in the hands of an executor shall be holden as the testator would have been holden. This statute fixed the lien upon these assets, and it would follow them, wherever they should go, in any subsequent division or distribution of them. The delivery of them by the executor subsequent to this did not remove them away from the lien, but left them in the

¹ 44 Conn., 369.

hands of the trustee of the legatee, or in the hands of the legatee, if they had reached her, subject to the lien as before.”¹

§ 209. **Liability of religious society.** A religious society purchased and held in its own name shares of a national bank paying money therefor which had been given by a testator. It was held that the society must be regarded an ordinary stockholder, and not a trustee, and therefore liable to an assessment for the debts of the bank like any other stockholder.²

§ 210. **Of ward.** It has been remarked that “a young ward, whose guardian invests in national bank stock, without his knowledge or consent, and even where he is incapable of assenting at all, is liable, in his other estates under the individual liability clause in the statute.”³

§ 211. **If shareholder is trustee this should appear on the book.** If a shareholder is, in truth, a trustee this should appear on the books of the bank, otherwise he will be liable like any other stockholder. “If a trustee wishes to disclose his trusteeship there is no difficulty in giving notice upon the books of the bank. If he does not disclose his trusteeship, he is guilty of laches, for which others should not suffer.”⁴

§ 212. **This cannot be shown by evidence contrary to book.** Nor can a person whose name appears on the stock book as a stockholder introduce evidence to prove that he was holding the stock as trustee. “The settlement of the affairs of an insolvent bank would be rendered a matter of great labor, expense and delay, if persons who appeared upon the books of the bank as individual stockholders were permitted to relieve themselves by proving that they held the stock as executors, or guardians, or trustees. If A is permitted to prove that he holds his stock as trustee for B, and B is permitted to show that he is trustee for A, litigation would be protracted, individual stockholders would suffer, and the strength of the personal liability section might be seriously impaired.”⁵

§ 213. “The president and cashier of every national banking association shall cause to be kept at all times a full and correct list

List of
shareholders
open for in-
spection.
Rev. Stat.
Sec. 5210.

¹ Witters v. Sowles, 32 Fed. R., 130 p. 139.

² Davis v. Essex Baptist Society, 44 Conn., 582.

³ Cox, J., in Keyser v. Hitz, 2 Mackey, p. 494.

⁴ Shipman, J., Davis v. Essex Baptist Society, 44 Conn., p. 586.

⁵ Id.

of the names and residences of all the shareholders in the association, and the number of shares held by each, in the office where its business is transacted. Such list shall be subject to the inspection of all the shareholders and creditors of the association, and the officers authorized to assess taxes under state authority, during business hours of each day in which business may be legally transacted. A copy of such list, on the first Monday of July of each year, verified by the oath of such president or cashier, shall be transmitted to the Comptroller of the Currency."¹

§ 214. **Other rights of shareholders.** Shareholders have additional rights and liabilities which may be more conveniently considered in other chapters. These relate especially to their duties in organizing a bank;² proceedings whenever they fail to pay their installments;³ and their right to vote at shareholders' meetings.⁴

¹ Act 1864, Sec. 40.

² § 13.

³ § 19.

⁴ § 17.

CHAPTER VII.

DUTIES OF A BANK AS A PUBLIC DEPOSITARY.

§ 215. Duties of bank.

216. Character of bank not changed.

§ 217. Government is not liable if bank fails.

218. Identical deposit is not retained.

Duties.
Rev. Stat.
Sec. 5153.

§ 215. Duties of a bank as a public depositary.

"All national banking associations, designated for that purpose by the Secretary of the Treasury, shall be depositaries of public money, except receipts from customs, under such regulations as may be prescribed by the Secretary; and they may also be employed as financial agents of the government; and they shall perform all such reasonable duties, as depositaries of public moneys and financial agents of the government, as may be required of them. The Secretary of the Treasury shall require the associations thus designated to give satisfactory security, by the deposit of the United States bonds and otherwise, for the safe-keeping and prompt payment of the public money deposited with them; and for the faithful performance of their duties as financial agents of the government. And every association so designated as receiver or depositary of the public money shall take and receive at par all of the national currency bills, by whatever association issued, which have been paid into the government for internal revenue, or for loans or stocks."¹

§ 216. Character of bank is not changed. "Designating a national bank," says Richardson, J., in speaking for the United States Court of Claims, "as a depositary of public money under this provision does not change the character of its organization, or convert its managers into public officers, or give to the government any additional control over the institution, or render the United States liable for any of the acts, contracts, or obligations

¹ Act 1864, Sec. 45.

of the bank. Nor does it constitute the bank a general financial agent of the government, but when after such designation it is required by law or by direction of the Secretary of the Treasury to perform any financial duties for the United States, it then becomes a special agent for the particular purpose required, with no power to bind the government beyond the special authority conferred upon it. In short, constituting a national bank a depository of public money is an employment of the institution for business purposes, as it is employed by individual depositors, and not an assumption of its powers and liabilities by the national government, nor the making of it, as an institution, a part of the United States Treasury.”¹

§ 217. **Government is not liable if bank fails.** Consequently the government is not liable in the event of the failure of a bank which is a public depository, for money deposited therein by the clerk of the federal court pending litigation.²

§ 218. **Deposit is not retained in kind as special property.** “When public money,” continues Judge Richardson, “is deposited with a designated depository national bank, it is not there retained in kind as the special property of the United States, of which the bank is made the custodian, but it becomes at once the property of the bank, is mingled with its other funds, is loaned or otherwise employed in the ordinary business of the corporation, and the bank, instead of being a custodian of public money, becomes a debtor to the United States precisely as it does to other depositors on receipt of individual deposits. * * The government has the same rights and remedies against the bank as other creditors have.”³

¹ Branch v. United States, 12 U. S. Ct. of Claims, 281 p. 287.

² Id.

³ Id., p. 288.

CHAPTER VIII.

HOW CAPITAL MAY BE INCREASED OR REDUCED.

§ 219. Increase of capital.

220. Meaning of statute.

221. Reduction.

222. Capital set free must be returned.

§ 223. Bonds deposited must correspond with change in capital.

224. Withdrawal of capital forbidden.

Increase of
capital.
Rev. Stat.
Sec. 5142.

§ 219. "Any association formed under this Title may, by its articles of association, provide for an increase of its capital from time to time, as may be deemed expedient, subject to the limitations of this Title. But the maximum of such increase to be provided in the articles of association shall be determined by the Comptroller of the Currency; and no increase of capital shall be valid until the whole amount of such increase is paid in, and notice thereof has been transmitted to the Comptroller of the Currency, and his certificate obtained specifying the amount of such increase of capital stock, with his approval thereof, and that it has been duly paid in as part of the capital of such association."¹

§ 220. **Meaning of Statute.** "It appears," says Judge Matthews, "that three things must concur to constitute a valid increase of the capital stock of a national banking association: 1st, That the association, in the mode pointed out in its articles, and not in excess of the maximum provided for by them, shall assent to an increased amount; 2d, That the whole amount of the proposed increase shall be paid in as part of the capital of such association; and 3rd, That the Comptroller of the Currency, by his certificate specifying the amount of such increase of capital stock, shall approve thereof, and certify to the fact of its payment."² Until the Comptroller has issued his certificate specifying the amount, and approving of the bank's action, there is no increase which the law will recognize for taxation, or for any other purpose.³

Reduction
of capital.
Rev. Stat.
Sec. 5143.

§ 221. "Any association formed under this Title may, by the vote of shareholders owning two-thirds of its capital stock, reduce its capital to any sum not below the amount required by

¹ Act 1864, Sec. 13.

² *Delano v. Butler*, 118 U. S., p. 649

³ *Charleston v. People's National Bank*, 5 Rich., (S. Car.) 103.

this Title to authorize the formation of associations; but no such reduction shall be allowable which will reduce the capital of the association below the amount required for its outstanding circulation, nor shall any such reduction be made until the amount of the proposed reduction has been reported to the Comptroller of the Currency and his approval thereof obtained.”¹

§ 222. **Capital set free must be returned to shareholders.** When a national bank reduces its capital stock the portion set free by the reduction must be returned to the shareholders. It cannot be retained as a surplus fund or for other purposes. Its return, says Van Hoesen, J., “is not a subject for the exercise of a director’s discretion. If the retired capital be a liability of the corporation in favor of the shareholders who give up the stock that is called in, the payment of that debt cannot lie in any man’s discretion. Payment cannot be deferred because the directors believe it for a creditor’s advantage to keep him out of his money.”²

§ 223. “The deposit of bonds made by each association shall be increased as its capital may be paid up or increased, so that every association shall at all times have on deposit with the Treasurer registered United States bonds to the amount of at least one-third of its capital stock actually paid in. And any association that may desire to reduce its capital or to close up its business and dissolve its organization, may take up its bonds upon returning to the Comptroller its circulating notes in the proportion hereinafter required, or may take up any excess of bonds beyond one-third of its capital stock, and upon which no circulating notes have been delivered.”³

Bonds deposited must correspond with change in capital. Rev. Stat. Sec. 5160.

§ 224. “No association, or any member thereof, shall, during the time it shall continue its banking operations, withdraw, or permit to be withdrawn, either in the form of dividends or otherwise, any portion of its capital.”⁴

Withdrawal of capital forbidden. Rev. Stat. Sec. 5204.

¹ Act 1864, Sec. 13.

² Seeley v. New York National Ex. Bank, 8 Daly 400 p. 403, S. C., 4 Abb. N. Cases, 61, affd 78 N. Y., 608.

³ Act 1864, Sec. 16.

⁴ Act 1864, Sec. 38. The whole of this section is given in Ch. V. § 125.

CHAPTER IX.

HOW BONDS MUST BE DEPOSITED WITH, AND KEPT BY THE GOVERNMENT.

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| <p>§ 225. Meaning of U. S. bonds.</p> <p>226. Must be deposited before beginning business.</p> <p>227. Must be increased or decreased with change in capital.</p> <p>228. Exchange of coupon bonds for registered. .</p> <p>229. Amount that must be deposited and withdrawal of circulation.</p> <p>230. Mode for retiring part of circulation and bonds.</p> | <p>§ 231. Monthly restriction on bonds that may be withdrawn and exclusion of called bonds.</p> <p>232. Annual examination of bonds.</p> <p>233. Bonds to secure circulation are held exclusively for that purpose.</p> <p>234. Are transferred to Treasurer in trust.</p> <p>235. Transfers are recorded.</p> <p>236. And advice of transfer is given.</p> <p>237. Comptroller to have access to bonds and books.</p> |
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U. S. bonds defined.
Rev. Stat.
Sec. 5158.

§ 225. "The term 'United States bonds,' as used throughout this Chapter, shall be construed to mean registered bonds of the United States."¹

Must be deposited before beginning business.
Rev. Stat.
Sec. 5159.

§ 226. "Every association, after having complied with the provisions of this Title, preliminary to the commencement of the banking business, and before it shall be authorized to commence banking business under this Title, shall transfer and deliver to the Treasurer of the United States any United States registered bonds bearing interest, to an amount not less than thirty thousand dollars and not less than one-third of the capital stock paid in. Such bonds shall be received by the Treasurer upon deposit, and shall be by him safely kept in his office, until they shall be otherwise disposed of, in pursuance of the provisions of this Title."²

Must be increased or decreased with change in capital.
Rev. Stat.
Sec. 5160.

§ 227. "The deposit of bonds made by each association shall be increased as its capital may be paid up or increased, so that every association shall at all times have on deposit with the Treasurer registered United States bonds to the amount of at least one-third of its capital stock actually paid in. And any as-

¹ Act 1864, Sec. 4.

² Act 1864, Sec. 16.

sociation that may desire to reduce its capital or to close up its business and dissolve its organization, may take up its bonds upon returning to the Comptroller its circulating notes in the proportion hereinafter required, or may take up any excess of bonds beyond one-third of its capital stock, and upon which no circulating notes have been delivered.”¹

§ 228. “To facilitate a compliance with the two preceding sections, the Secretary of the Treasury is authorized to receive from any association, and cancel, any United States coupon bonds, and to issue in lieu thereof registered bonds of like amount, bearing a like rate of interest, and having the same time to run.”²

Exchange of coupon bonds for registered. Rev. Stat. Sec. 5161.

§ 229. When the Act of 1882 was passed, authorizing the extension of national banking associations, it provided “that national banks now organized or hereafter organized, having a capital of \$150,000, or less, shall not be required to keep on deposit or deposit with the Treasurer of the United States United States bonds in excess of one-fourth of their capital stock as security for their circulating notes; but such banks shall keep on deposit or deposit with the Treasurer of the United States the amount of bonds as herein required. And such of those banks having on deposit bonds in excess of that amount are authorized to reduce their circulation by the deposit of lawful money as provided by law: *Provided* That the amount of such circulating notes shall not in any case exceed ninety per centum of the par value of the bonds deposited as herein provided.”³ The section also contained provisions for paying the cost of transporting and redeeming their outstanding notes.⁴

Amount that must be deposited and withdrawal of circulation.

§ 230. In 1874 Congress provided for the withdrawal of portions of its notes and bonds, the fourth section declaring “that any association organized under this Act, or any of the acts of which this is an amendment, desiring to withdraw its circulating notes, in whole or in part, may, upon the deposit of lawful money with the Treasurer of the United States in sums of not less than nine thousand dollars, take up the bonds which said association has on deposit with the Treasurer for the security of such circulating notes; which bonds shall be assigned to the bank in the

Mode for retiring part of circulation and bonds.

¹ Act 1864, Sec. 16.

² Id.

³ Public Laws, 47 C. 1 S. Ch. 290, part of Sec. 8.

⁴ § 271.

manner specified in the nineteenth section of the National Bank Act [or sections 5162 and 5163 of the Revised Statutes]; and the outstanding notes of said association, to an amount equal to the legal-tender notes deposited, shall be redeemed at the Treasury of the United States, and destroyed as now provided by law: *Provided*, That the amount of the bonds on deposit for circulation shall not be reduced below fifty thousand dollars.”¹

§ 231. Eight years afterward the above Act was so modified “that any national banking association now organized, or hereafter organized, desiring to withdraw its circulating notes, upon a deposit of lawful money with the Treasurer of the United States, as provided in section four of the Act of June twentieth, 1874, entitled ‘An act fixing the amount of United States notes, providing for a redistribution of national bank currency, and for other purposes,’ or as provided in this Act, is authorized to deposit lawful money and withdraw a proportionate amount of the bonds held as security for its circulating notes in the order of such deposits; and no national bank which makes any deposit of lawful money in order to withdraw its circulating notes shall be entitled to receive any increase of its circulation for the period of six months from the time it made such deposit of lawful money for the purpose aforesaid: *Provided*, That not more than \$3,000,000 of lawful money shall be deposited during any calendar month for this purpose: *And provided further*, That the provisions of this section shall not apply to bonds called for redemption by the Secretary of the Treasury, nor to the withdrawal of circulating notes in consequence thereof.”²

Annual examination of bonds.
Rev. Stat.
Sec. 5166.

§ 232. “Every association having bonds deposited in the office of the Treasurer of the United States shall, once or oftener in each fiscal year, examine and compare the bonds pledged by the association with the books of the Comptroller of the Currency and with the accounts of the association, and, if they are found correct, to execute to the Treasurer a certificate setting forth the different kinds and the amounts thereof, and that the same are in the possession and custody of the Treasurer at the date of the certificate. Such examination shall be made at such time or times, during the ordinary business hours, as the Treasurer and the Comptroller, respectively, may select, and may be made by an of-

¹ 18 Stat. at Large, 43 C. 1 S. Ch. 343.

² Public Laws, 47 C. 1 S. Ch. 290, Sec. 9.

ficer or agent of such association, duly appointed in writing for that purpose; and his certificate before mentioned shall be of like force and validity as if executed by the president or cashier. A duplicate of such certificate, signed by the Treasurer, shall be retained by the association."¹

§ 233. "The bonds transferred to and deposited with the Treasurer of the United States, by any association, for the security of its circulating notes, shall be held exclusively for that purpose, until such notes are redeemed, except as provided in this Title. The Comptroller of the Currency shall give to any such association powers of attorney to receive and appropriate to its own use the interest on the bonds which it has so transferred to the Treasurer; but such powers shall become inoperative whenever such association fails to redeem its circulating notes. Whenever the market or cash value of any bonds thus deposited with the Treasurer is reduced below the amount of the circulation issued for the same, the Comptroller may demand and receive the amount of such depreciation in other United States bonds at cash value, or in money, from the association, to be deposited with the Treasurer as long as such depreciation continues. And the Comptroller, upon the terms prescribed by the Secretary of the Treasury, may permit an exchange to be made of any of the bonds deposited with the Treasurer by any association, for other bonds of the United States authorized to be received as security for circulating notes, if he is of opinion that such an exchange can be made without prejudice to the United States; and he may direct the return of any bonds to the association which transferred the same, in sums of not less than one thousand dollars, upon the surrender to him and the cancellation of a proportionate amount of such circulating notes: *Provided*, That the remaining bonds which shall have been transferred by the association offering to surrender circulating notes are equal to the amount required for the circulating notes not surrendered by such association, and that the amount of bonds in the hands of the Treasurer is not diminished below the amount required to be kept on deposit with him, and that there has been no failure by the association to redeem its circulating notes, nor any other violation by it of the provisions of this Title, and that the market or cash value of the remaining bonds is not below the amount required for the circulation issued for the same."²

Bonds to secure circulation are held exclusively for that purpose. Rev. Stat. Sec. 5167.

¹ Act 1864, Sec. 25.

² Act 1864, Sec. 26.

Are transferred in trust to Treasurer.
Rev. Stat.
Sec. 5162.

§ 234. "All transfers of United States bonds, made by any association under the provisions of this Title, shall be made to the Treasurer of the United States in trust for the association, with a memorandum written or printed on each bond, and signed by the cashier, or some other officer of the association making the deposit. A receipt shall be given to the association, by the Comptroller of the Currency, or by a clerk appointed by him for that purpose, stating that the bond is held in trust for the association on whose behalf the transfer is made, and as security for the redemption and payment of any circulating notes that have been or may be delivered to such association. No assignment or transfer of any such bond by the Treasurer shall be deemed valid unless countersigned by the Comptroller of the Currency." ¹

Transfers are recorded.
Rev. Stat.
Sec. 5163.

§ 235. "The Comptroller of the Currency shall keep in his office a book in which he shall cause to be entered, immediately upon countersigning it, every transfer or assignment by the Treasurer, of any bonds belonging to a national banking association, presented for his signature. He shall state in such entry the name of the association from whose accounts the transfer is made, the name of the party to whom it is made, and the par value of the bonds transferred." ²

And advice of transfer is given.
Rev. Stat.
Sec. 5164.

§ 236. "The Comptroller of the Currency shall immediately upon countersigning and entering any transfer or assignment by the Treasurer, of any bonds belonging to a national banking association, advise by mail the association from whose accounts the transfer is made, of the kind and numerical designation of the bonds, and the amount thereof so transferred." ³

Comptroller to have access to bonds and books.
Rev. Stat.
Sec. 5165.

§ 237. "The Comptroller of the Currency shall have at all times, during office hours, access to the books of the Treasurer of the United States for the purpose of ascertaining the correctness of any transfer or assignment of the bonds deposited by an association, presented to the Comptroller to countersign; and the Treasurer shall have the like access to the books mentioned in section fifty-one hundred and sixty-three, during office hours, to ascertain the correctness of the entries in the same; and the Comptroller shall also at all times have access to the bonds on deposit with the Treasurer, to ascertain their amount and condition." ⁴

¹ Act 1864, Sec. 19.

² Act 1864, Secs. 19, 20.

³ Act 1864, Sec. 19.

⁴ Act 1864, Sec. 20.

CHAPTER X.

REGULATIONS CONCERNING THE ISSUE OF CIRCULATING NOTES.

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| § 238. Amount of notes that may be issued. | § 239. Reduction of circulation by banks having \$150,000 capital or less. |
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Former Restrictions on the Amount of Issues.

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| § 240. Early mode of proportioning notes among banks.
241. Limitation of a bank's circulation.
242. Former limit to aggregate amount.
243. Repeal of limit.
244. Limitation in amount of legal-tender notes.
245. How notes were apportioned.
246. Surplus circulation was withdrawn from states having excess. | § 247. How Comptroller should proceed to get excess.
248. Later mode of procedure.
249. Mode of issuing notes thereunder.
250. Sections of Revised Statutes repealed by Resumption Act.
251. So was section relating to removal of banks. |
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Engraving, Printing and Destruction of Notes.

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| § 252. Engraving and printing.
253. Effect of omitting seal.
254. Charter numbers. | § 255. Control of plates and dies.
256. Examination of plates. |
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Denominations, for What Received, Illegal Notes, Worn-out Notes and their Destruction.

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| § 257. None to be issued below five dollars.
258. When a legal-tender.
259. Shall be received by all except gold banks.
260. Prohibition of other issues.
261. Certificate of deposit is not a bank note.
262. Shall not be used to create a capital. | § 263. Banks must not pay uncurrent notes.
264. Fraudulent notes to be marked.
265. Unlawful delivery to banks.
266. Imitations prohibited.
267. Penalty for mutilating.
268. Destruction and replacing of worn-out notes. |
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Mode of Redeeming Notes of Active Banks.

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| § 269. Selection of reserve agents.
270. Redemption by U. S. Treasurer and expense. | § 271. Expense modified by law of 1882.
272. Regulations concerning reserve and places of redemption. |
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Mode of Redeeming Notes of Liquidating Banks.

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| <p>§ 273. Voluntary liquidation.</p> <p>274. How board shall proceed.</p> <p>275. Deposit of lawful money to redeem notes.</p> <p>276. Consolidating banks need not redeem.</p> <p>277. Bonds to be assigned to closed banks.</p> <p>278. Notes to be destroyed.</p> <p>279. Proceedings if bank fail to take up bonds.</p> <p>280. Mode of protesting notes unpaid on demand.</p> <p>281. Examination by special agent after protest.</p> | <p>§ 282. After protest bank shall not continue business.</p> <p>283. Holders to be notified to present notes at treasury for payment.</p> <p>284. Sale of bonds at auction and lien of U. S.</p> <p>285. Government has first lien.</p> <p>286. Sale of bonds privately.</p> <p>287. Disposition of notes redeemed by Treasurer.</p> <p>288. Cancellation of notes.</p> <p>289. Fees for protesting, examinations and receivership.</p> |
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Associations for Issuing Gold Notes.

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| <p>§ 290. How organized.</p> <p>291. Repeal of limit on amount of their circulation.</p> | <p>§ 292. Reserve on gold-note circulation.</p> |
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Amount of notes that may be issued.
Act July 12, 1882.

§ 238. The act of 1882 provided "that upon a deposit of bonds as described by sections 5159 and 5160, except as modified by section four of an Act entitled 'An Act fixing the amount of United States notes, providing for a redistribution of the national bank currency, and for other purposes,' approved June twentieth, 1874, and as modified by section eight of this Act, the association making the same shall be entitled to receive from the Comptroller of the Currency circulating notes of different denominations, in blank, registered and countersigned as provided by law, equal in amount to ninety per centum of the current market value, not exceeding par, of the United States bonds so transferred and delivered, and at no time shall the total amount of such notes issued to any such association exceed ninety per centum of the amount at such time actually paid in of its capital stock; and the provisions of sections 5171 and 5176 of the Revised Statutes are hereby repealed."¹

Reduction of circulation by banks having \$150,000 or less.
Act July 12, 1882.

§ 239. The two sections first mentioned in the above Act relate to the kind and amount of bonds that must be delivered to the United States Treasurer, and to their increase or reduction, and were given in the previous chapter as well as the fourth sec-

¹ Public Laws, 47 C. 1 S. Ch. 290, Sec. 10.

tion of the Act of 1874 which provided a new mode for withdrawing bonds. The eighth section of the Act under consideration which further modified the law with respect to the depositing of bonds to secure circulation declared "that national banks now organized or hereafter organized, having a capital of \$150,000, or less, shall not be required to keep on deposit or deposit with the Treasurer of the United States United States bonds in excess of one-fourth of their capital stock as security for their circulating notes; but such banks shall keep on deposit or deposit with the Treasurer of the United States the amount of bonds as herein required. And such of those banks having on deposit bonds in excess of that amount are authorized to reduce their circulation by the deposit of lawful money as provided by law: *Provided* That the amount of such circulating notes shall not in any case exceed ninety per centum of the par value of the bonds deposited as herein provided." ¹

§ 240. The two sections of the Revised Statutes that were repealed in 1882 in the opening section of this Chapter enacted that "upon a deposit of bonds as prescribed by sections fifty-one hundred and fifty-nine and fifty-one hundred and sixty, the association making the same shall be entitled to receive from the Comptroller of the Currency circulating notes of different denominations, in blank, registered and countersigned as hereinafter provided, equal in amount to ninety per centum of the current market value of the United States bonds so transferred and delivered, but not exceeding ninety per centum of the amount of the bonds at the par value thereof, if bearing interest at a rate not less than five per centum per annum: *Provided*, That the amount of circulating notes to be furnished to each association shall be in proportion to its paid-up capital, as follows, and no more:

Early mode
of proportioning notes
among
banks.
Rev. Stat.
Sec. 5171.

First To each association whose capital does not exceed five hundred thousand dollars, ninety per centum of such capital.

Second. To each association whose capital exceeds five hundred thousand dollars, but does not exceed one million of dollars, eighty per centum of such capital.

Third. To each association whose capital exceeds one million of dollars, but does not exceed three million[s]² of dollars, seventy-five per centum of such capital.

¹ Id., part of Sec. 8.

² This is an obvious error in the Revised Statutes.

Fourth. To each association whose capital exceeds three millions of dollars, sixty per centum of such capital."

Limitation
of a bank's
circulation.
Rev. Stat.
Sec. 5176.

§ 241. The other repealed section enacted that "no banking association organized subsequent to the twelfth day of July, eighteen hundred and seventy, shall have a circulation in excess of five hundred thousand dollars."

Former
limit to ag-
gregate
amount.
Rev. Stat.
Sec. 5177.

§ 242. With respect to the quality of notes which the national banking associations in the aggregate can issue the Revised Statutes declared that "the aggregate amount of circulating notes issued under the Act of February twenty-five, eighteen hundred and sixty-three, and under the Act of June three, eighteen hundred and sixty-four, and under section one of the Act of July twelve, eighteen hundred and seventy, and under this Title, shall not exceed three hundred and fifty-four millions of dollars."

Repeal of
limit.
Act January
14, 1875.

§ 243. But, in the Act for the resuming of specie payments Congress enacted "that section five thousand one hundred and seventy-seven of the Revised Statutes of the United States limiting the aggregate amount of circulating notes of national banking associations, be, and is hereby, repealed; and each existing banking association may increase its circulating notes in accordance with existing law without respect to said aggregate limit; and new banking associations may be organized in accordance with existing law without respect to said aggregate limit; and the provisions of law for the withdrawal and redistribution of national bank currency among the several states and territories are hereby repealed. And whenever, and so often, as circulating notes shall be issued to any such banking association, so increasing its capital or circulating notes, or so newly organized as aforesaid, it shall be the duty of the Secretary of the Treasury to redeem the legal-tender United States notes in excess only of three hundred million of dollars, to the amount of eighty per centum of the sum of national bank notes so issued to any such banking association as aforesaid, and to continue such redemption as such circulating notes are issued until there shall be outstanding the sum of three hundred million dollars of such legal-tender United States notes, and no more. And on and after the first day of January, Anno Domini, eighteen hundred and seventy-nine, the Secretary of the Treasury shall redeem, in coin, the United States legal-tender notes then outstanding on their presentation for redemption, at the office of the Assistant Treasurer of the United

States in the city of New York [and the city of San Francisco, California,]¹ in sums of not less than fifty dollars. And to enable the Secretary of the Treasury to prepare and provide for the redemption in this Act authorized or required, he is authorized to use any surplus revenues, from time to time, in the treasury not otherwise appropriated, and to issue, sell, and dispose of, at not less than par, in coin, either of the descriptions of bonds of the United States described in the Act of Congress approved July fourteenth, eighteen hundred and seventy, entitled, 'An Act to authorize the refunding of the national debt,' with like qualities, privileges, and exemptions, to the extent necessary to carry this Act into full effect, and to use the proceeds thereof for the purposes aforesaid. And all provisions of law inconsistent with the provisions of this Act are hereby repealed."²

§. 244. Limitation in amount of legal tender notes.

At the time of removing the restriction on bank circulation. The amount of legal tender notes in circulation was \$382,000,000, and Congress then declared "that the amount of United States notes outstanding and to be used as a part of the circulating medium, shall not exceed the sum of three hundred and eighty-two million dollars, which said sum shall appear in each monthly statement of the public debt, and no part thereof shall be held or used as a reserve."³ In the Resumption Act, from which we have quoted, the amount of these notes was to be reduced to \$300,000,000. When, however, in May, 1878, the amount had been reduced to \$346,681,016, Congress repealed that feature of the resumption law declaring "that from and after the passage of this Act it shall not be lawful for the Secretary of the Treasury or other officer under him to cancel or retire any more of the United States legal-tender notes. And when any of said notes may be redeemed or be received into the Treasury under any law from any source whatever and shall belong to the United States, they shall not be retired cancelled or destroyed but they shall be re-issued and paid out again and kept in circulation: *Provided*, That nothing herein shall prohibit the cancellation and destruction of mutilated notes and the issue of other notes of like denomina-

¹ These bracketed words were added by Act March 3, 1887, Public Laws, 49 C. 2 S. Ch. 378, Sec. 3.

² 18 Stat. at Large, 43 C. 2 S. Ch. 15, Sec. 3.

³ Act June 20, 1874, 18 Stat. at Large, 43 C. 1 S. Ch. 343, Sec. 6.

tion in their stead, as now provided by law. All acts and parts of acts in conflict herewith are hereby repealed."¹

The effect of removing the restrictions on bank circulation was to render useless the regulations which had been adopted for apportioning the bank note circulation among the states. Yet as these are incorporated in the Revised Statutes perhaps they should be found here.

How notes
were ap-
portioned.
Rev. Stat.
Sec. 5178.

§ 245. "One hundred and fifty millions of dollars of the entire amount of circulating notes authorized to be issued shall be apportioned to associations in the states, in the territories, and in the District of Columbia, according to representative population. One hundred and fifty millions shall be apportioned by the Secretary of the Treasury among associations formed in the several states, in the territories, and in the District of Columbia, having due regard to the existing banking capital, resources, and business of such states, territories, and district. The remaining fifty-four millions shall be apportioned among associations in states and territories having, under the apportionments above prescribed, less than their full proportion of the aggregate amount of notes authorized, which made due application for circulating notes prior to the twelfth day of July, eighteen hundred and seventy-one. Any remainder of such fifty-four millions shall be issued to banking associations applying for circulating notes in other states or territories having less than their proportion."

Surplus cir-
culation was
to be with-
drawn from
states hav-
ing excess.
Rev. Stat.
Sec. 5179.

§ 246. "In order to secure a more equitable distribution of the national banking currency, there may be issued circulating notes to banking associations organized in states and territories having less than their proportion, and the amount of circulation herein authorized shall, under the direction of the Secretary of the Treasury, as it may be required for this purpose, be withdrawn, as herein provided, from banking associations organized in states having more than their proportion, but the amount so withdrawn shall not exceed twenty-five million dollars: *Provided*, That no circulation shall be withdrawn under the provisions of this section until after the fifty-four millions granted in the first section of the Act of July twelfth, eighteen hundred and seventy, shall have been taken up."

¹ Act May 31, 1878, 20 Stat. at Large, 45 C. 2 S. Ch. 87.

§ 247. "The Comptroller of the Currency shall, under the direction of the Secretary of the Treasury, make a statement showing the amount of circulation in each state and territory, and the amount necessary to be withdrawn from each association, and shall forthwith make a requisition for such amount upon such associations, commencing with those having a circulation exceeding one million of dollars, in states having an excess of circulation, and withdrawing their circulation in excess of one million of dollars, and then proceeding proportionately with other associations having a circulation exceeding three hundred thousand dollars, in states having the largest excess of circulation, and reducing the circulation of such associations in states having the greatest proportion in excess, leaving undisturbed the associations in states having a smaller proportion, until those in greater excess have been reduced to the same grade, and continuing thus to make such reductions until the full amount of twenty-five millions has been withdrawn; and the circulation so withdrawn shall be distributed among the states and territories having less than their proportion, so as to equalize the same. Upon failure of any association to return the amount of circulating notes so required, within one year, the Comptroller shall sell at public auction, having given twenty days' notice thereof in one daily newspaper printed in Washington and one in New York city, an amount of the bonds deposited by that association as security for its circulation, equal to the circulation required to be withdrawn from the association and not returned in compliance with such requisition; and he shall, with the proceeds, redeem so many of the notes of such association, as they come into the treasury, as will equal the amount required and not returned; and shall pay the balance, if any, to the association."

How Comptroller should proceed to get excess.
Rev. Stat. Sec. 5180.

§ 248. The above sections relating to the apportionment of the national bank circulation were enacted in July, 1870. Soon after their incorporation into the Revised Statutes another Act provided "that so much of the Act entitled 'An Act to provide for the redemption of the three-per-centum temporary loan certificates, and for an increase of national bank notes,' as provides that no circulation shall be withdrawn under the provisions of section six of said Act, until after the fifty-four millions granted in section one of said Act shall have been taken up, is hereby repealed; and it shall be the duty of the Comptroller of the Currency, under the direction of the

Later mode of procedure.
Act June 20, 1874.

Secretary of the Treasury, to proceed forthwith, and he is hereby authorized and required, from time to time, as applications shall be duly made therefor, and until the full amount of fifty-five million dollars shall be withdrawn, to make requisitions upon each of the national banks described in said section, and in the manner therein provided, organized in states having an excess of circulation, to withdraw and return so much of their circulation as by said act may be apportioned to be withdrawn from them, or, in lieu thereof, to deposit in the Treasury of the United States lawful money sufficient to redeem such circulation, and upon the return of the circulation required, or the deposit of lawful money, as herein provided, a proportionate amount of the bonds held to secure the circulation of such association as shall make such return or deposit shall be surrendered to it.¹

“That upon the failure of the national banks upon which requisition for circulation shall be made, or of any of them, to return the amount required, or to deposit in the treasury lawful money to redeem the circulation required, within thirty days, the Comptroller of the Currency shall at once sell, as provided in section forty-nine of the National-Currency Act approved June third, eighteen hundred and sixty-four, bonds held to secure the redemption of the circulation of the association or associations which shall so fail, to an amount sufficient to redeem the circulation required of such association or associations, and with the proceeds, which shall be deposited in the Treasury of the United States, so much of the circulation of such association or associations shall be redeemed as will equal the amount required and not returned and if there be an excess of proceeds over the amount required for such redemption, it shall be returned to the association or associations whose bonds shall have been sold. And it shall be the duty of the Treasurer, Assistant Treasurers, designated depositaries, and national bank depositaries of the United States, who shall be kept informed by the Comptroller of the Currency of such associations as shall fail to return circulation as required, to assort and return to the Treasury for redemption the notes of such associations as shall come into their hands until the amount required shall be redeemed, and in like manner to assort and return to the Treasury, for redemption, the notes of such national banks as have failed; or gone into voluntary liqui-

¹ 18 Stat. at Large. 43 C. 1 S. Ch. 343, Sec. 7.

dation for the purpose of winding up their affairs, and of such as shall hereafter so fail or go into liquidation.¹

§ 249. "That from and after the passage of this Act it shall be lawful for the Comptroller of the Currency, and he is hereby required, to issue circulating notes without delay, as applications therefor are made, not to exceed the sum of fifty-five million dollars, to associations organized, or to be organized, in those states and territories having less than their proportion of circulation, under an apportionment made on the basis of population and of wealth, as shown by the returns of the census of eighteen hundred and seventy; and every association hereafter organized shall be subject to, and be governed by, the rules, restrictions, and limitations, and possess the rights, privileges, and franchises, now or hereafter to be prescribed by law as to national banking associations, with the same power to amend, alter, and repeal provided by 'the National Bank Act.' *Provided*, That the whole amount of circulation withdrawn and redeemed from banks transacting business shall not exceed fifty-five million dollars, and that such circulation shall be withdrawn and redeemed as it shall be necessary to supply the circulation previously issued to the banks in those states having less than their apportionment: *And provided further*, That not more than thirty million dollars shall be withdrawn and redeemed as herein contemplated during the fiscal year ending June thirtieth, eighteen hundred and seventy-five."²

Mode of issuing notes thereunder. Act June 20, 1874.

§ 250. **Sections of Revised Statutes repealed by Resumption Act.** All these provisions for restricting and apportioning the bank circulation were swept away by the Resumption Act of January, 1875, as well as the following section of the Revised Statutes prescribing for the removal of banks into other states.

Above sections repealed by Resumption Act.

§ 251. "Any association located in any state having more than its proportion of circulation may be removed to any state having less than its proportion of circulation, under such rules and regulations as the Comptroller of the Currency, with the approval of the Secretary of the Treasury, shall prescribe: *Provided*, That the amount of the issue of said banks shall not be deducted from the issue of fifty-four millions mentioned in section five thousand one hundred and seventy-eight."

So was section relating to removal of banks. Rev. Stat. Sec. 5181.

¹ 18 Stat. at Large, 43 C. 1 S. Ch. 343, Sec. 8.

² *Id.*, Sec. 9.

Engraving
and print-
ing.
Rev. Stat.
Sec. 5172.

§ 252. "In order to furnish suitable notes for circulation, the Comptroller of the Currency shall, under the direction of the Secretary of the Treasury, cause plates and dies to be engraved, in the best manner to guard against counterfeiting and fraudulent alterations, and shall have printed therefrom, and numbered, such quantity of circulating notes, in blank, of the denominations of one dollar, two dollars, three dollars, five dollars, ten dollars, twenty dollars, fifty dollars, one hundred dollars, five hundred dollars, and one thousand dollars, as may be required to supply the associations entitled to receive the same. Such notes shall express upon their face that they are secured by United States bonds, deposited with the Treasurer of the United States, by the written or engraved signatures of the Treasurer and Register, and by the imprint of the seal of the treasury; and shall also express upon their face the promise of the association receiving the same to pay on demand, attested by the signatures of the president or vice-president and cashier; and shall bear such devices and such other statements, and shall be in such form, as the Secretary of the Treasury shall, by regulation, direct."¹

§ 253. **Effect of omitting seal.** If the imprint of the seal of the treasury be omitted the notes will be a valid contract. "The imprint of the seal of the treasury is simply intended to be evidence in regard to the security of the contract and forms no part of the contract itself."²

§ 254. In 1874 Congress further enacted "that the Comptroller of the Currency shall, under such rules and regulations as the Secretary of the Treasury may prescribe, cause the charter numbers of the association to be printed upon all national bank notes which may be hereafter issued by him."³

Control of
plates and
dies.
Rev. Stat.
Sec. 5173.

§ 255. "The plates and special dies to be procured by the Comptroller of the Currency for the printing of such circulating notes shall remain under his control and direction, and the expenses necessarily incurred in executing the laws respecting the procuring of such notes, and all other expenses of the Bureau of the Currency, shall be paid out of the proceeds of the taxes or duties assessed and collected on the circulation of national banking associations under this Title."⁴

¹ Act 1864, Sec. 22.

² *United States v. Bennett*, 17 Blatchf., 357 p. 361.

³ 18 Stat. at Large, 43 C. 1 S. Ch. 343, Sec. 5.

⁴ Act 1864, Sec. 41.

§ 256. "The Comptroller of the Currency shall cause to be examined, each year, the plates, dies, [but-pieces],¹ and other material from which the national bank circulation is printed, in whole or in part, and file in his office annually a correct list of the same. Such material as shall have been used in the printing of the notes of associations which are in liquidation, or have closed business, shall be destroyed under such regulations as shall be prescribed by the Comptroller of the Currency and approved by the Secretary of the Treasury. The expenses of any such examination or destruction shall be paid out of any appropriation made by Congress for the special examination of national banks and bank note plates."²

Examination of plates, etc.
Rev. Stat.
Sec. 5174.

§ 257. "Not more than one-sixth part of the notes furnished to any association shall be of a less denomination than five dollars. After specie payments are resumed no association shall be furnished with notes of a less denomination than five dollars."³

None to be issued below five dollars.
Rev. Stat.
Sec. 5175.

§ 258. "After any association receiving circulating notes under this Title has caused its promise to pay such notes on demand to be signed by the president or vice-president and cashier thereof, in such manner as to make them obligatory promissory notes, payable on demand, at its place of business, such association may issue and circulate the same as money. And the same shall be received at par in all parts of the United States in payment of taxes, excises, public lands, and all other dues to the United States, except duties on imports; and also for all salaries and other debts and demands owing by the United States to individuals, corporations, and associations within the United States, except interest on the public debt, and in redemption of the national currency."⁴

When a legal tender.
Rev. Stat.
Sec. 5182.

§ 259. "Every national banking association formed or existing under this Title, shall take and receive at par, for any debt or liability to it, any and all notes or bills issued by any lawfully organized national banking association. But this provision shall not apply to any association organized for the purpose of issuing notes payable in gold."⁵

Shall be received by all except gold banks.
Rev. Stat.
Sec. 5196.

¹ The bracketed words were substituted for but-pieces by Act Feb. 27, 1877, 19 Stat. at Large, 44 C. 2 S. Ch. 69.

² Act March 3, 1873, 17 Stat. at Large, 42 C. 3 S. Ch. 269, Sec. 4.

³ Act 1864, Sec. 22.

⁴ Act 1864, Sec. 23.

⁵ Act 1864, Sec. 32; Act July 12, 1870, 16 Stat. at Large, 41 C. 2 S. Ch. 252, Sec. 5.

Issue of
other notes
prohibited.
Rev. Stat.
Sec. 5183.

§ 260. "No national banking association shall issue [post-notes or]¹ any other notes to circulate as money than such as are authorized by the provisions of this Title."²

§ 261. **Certificate of deposit is not a bank note.** The issuing of a certificate of deposit stating that the person named therein has deposited in the bank a sum of money payable to the order of himself on return of the certificate properly indorsed, and which it is understood between the bank and depositor is not to be payable until a future specified day, is not a violation of this section.³

Shall not use
notes to
create capital.
Rev. Stat.
Sec. 5203.

§ 262. "No association shall, either directly or indirectly, pledge or hypothecate any of its notes or circulation, for the purpose of procuring money to be paid in on its capital stock, or to be used in its banking operations, or otherwise; nor shall any association use its circulating notes, or any part thereof, in any manner or form, to create or increase its capital stock."⁴

Banks must
not pay un-
current
notes.
Rev. Stat.
Sec. 5206.

§ 263. "No association shall at any time pay out on loans or discounts, or in purchasing drafts or bills of exchange, or in payment of deposits, or in any other mode pay or put in circulation, the notes of any bank or banking association which are not, at any such time, receivable, at par, on deposit, and in payment of debts by the association so paying out or circulating such notes; nor shall any association knowingly pay out or put in circulation any notes issued by any bank or banking association which at the time of such paying out or putting in circulation is not redeeming its circulating notes in lawful money of the United States."⁵

Fraudulent
notes to be
marked.

§ 264. In 1876 it was further enacted "that all United States officers charged with the receipt or disbursement of public moneys, and all officers of national banks, shall stamp or write in plain letters the word 'counterfeit' 'altered' or 'worthless,' upon all fraudulent notes issued in the form of, and intended to circulate as money, which shall be presented at their places of business; and if such officers shall wrongfully stamp any genuine note

¹ The bracketed words are an amendment by Act Feb. 18, 1875, 18 Stat at Large, 43 C. 2 S. Ch. 80.

² Act 1864, Sec. 23.

³ Hunt, appellant, 141 Mass., 515; Riddle v. First National Bank, 27 Fed. R., 503.

⁴ Act 1864, Sec. 37.

⁵ Act 1864, Sec. 39.

of the United States, or of the national banks, they shall, upon presentation, redeem such notes at the face-value thereof.”¹

§ 265. “No officer acting under the provisions of this Title shall countersign or deliver to any association, or to any other company or person, any circulating notes contemplated by this Title, except in accordance with the true intent and meaning of its provisions. Every officer who violates this section shall be deemed guilty of a high misdemeanor, and shall be fined not more than double the amount so countersigned and delivered, and imprisoned not less than one year and not more than fifteen years.”²

Unlawful delivery to banks.
Rev. Stat. Sec. 5187.

§ 266. “It shall not be lawful to design, engrave, print, or in any manner make or execute, or to utter, issue, distribute, circulate, or use, any business or professional card, notice, placard, circular, hand-bill, or advertisement, in the likeness or similitude of any circulating note or other obligation or security of any banking association organized or acting under the laws of the United States which has been or may be issued under this Title, or any act of Congress, or to write, print, or otherwise impress upon any such note, obligation, or security any business or professional card, notice or advertisement, or any notice or advertisement of any matter or thing whatever. Every person who violates this section shall be liable to a penalty of one hundred dollars, recoverable one-half to the use of the informer.”³

Imitations prohibited.
Rev. Stat. Sec. 5188.

§ 267. “Every person who mutilates, cuts, defaces, disfigures, or perforates with holes, or unites or cements together, or does any other thing to any bank-bill, draft, note, or other evidence of debt, issued by any national banking association, or who causes or procures the same to be done, with intent to render such bank-bill, draft, note, or other evidence of debt unfit to be reissued by said association, shall be liable to a penalty of fifty dollars, recoverable by the association.”⁴

Penalty for mutilating.
Rev. Stat. Sec. 5189.

§ 268. “It shall be the duty of the Comptroller of the Currency to receive worn-out or mutilated circulating notes issued by any banking association, and also, on due proof of the destruction of any such circulating notes, to deliver in place thereof to the association other blank circulating notes to an equal amount.

Destruction and replacing of worn-out or mutilated notes.
Rev. Stat. Sec. 5184.

¹ 19 Stat. at Large, 44 C. 1 S. Ch. 156, Sec. 5.

² Act 1864, Sec. 27.

³ Act Feb. 5, 1867.

⁴ Act 1864, Sec. 58.

Such worn-out or mutilated notes, after a memorandum has been entered in the proper books, in accordance with such regulations as may be established by the Comptroller, as well as all circulating notes which shall have been paid or surrendered to be canceled, shall be [destroyed by maceration]¹ in presence of four persons, one to be appointed by the Secretary of the Treasury, one by the Comptroller of the Currency, one by the Treasurer of the United States, and one by the association, under such regulations as the Secretary of the Treasury may prescribe. A certificate of such [maceration]² signed by the parties so appointed, shall be made in the books of the Comptroller, and a duplicate thereof forwarded to the association whose notes are thus canceled.”³

Selection of
reserve
agents.
Rev. Stat.
Sec. 5195.

§ 269. For redeeming their circulating notes the Revised Statutes provided that “each association organized in any of the cities named in section fifty-one hundred and ninety-one [shall select, subject to the approval of the Comptroller of the Currency, an association in the city of New York, at which it will redeem its circulating notes at par; and]⁴ may keep one-half of its lawful-money reserve in cash deposits in the city of New York. But the foregoing provision shall not apply to associations organized and located in the city of San Francisco for the purpose of issuing notes payable in gold. Each association not organized within the cities named, shall select, subject to the approval of the Comptroller, an association in either of the cities named, at which it will redeem its circulating notes at par. The Comptroller shall give public notice of the names of the associations selected, at which redemptions are to be made by the respective associations, and of any change that may be made of the association at which

¹ The words “destroyed by maceration” were substituted for “burned to ashes” by Act of June 23, 1874, 18 Stat. at Large, 43 C. 1 S. Ch. 455 p. 206.

² The word “maceration” was substituted for “burning” by Act of June 23, 1874.

³ Act 1864, Sec. 23. “For the maceration of national-bank notes, United States notes, and other obligations of the United States authorized to be destroyed, ten thousand dollars; and that all such issues hereafter destroyed may be destroyed by maceration instead of burning to ashes, as now provided by law; and that so much of sections twenty-four and forty-three of the National-Currency Act as requires national-bank notes to be burned to ashes is hereby repealed, 18 Stat. at Large, 43 C. 1 S. Ch. 445 p. 206.

⁴ The bracketed words were stricken out by Act of June 20, 1874, 18 Stat. at Large, 43 C. 1 S. Ch. 343, last clause of Sec. 3.

the notes of any association are redeemed. Whenever any association fails either to make the selection or to redeem its notes as aforesaid, the Comptroller of the Currency may, upon receiving satisfactory evidence thereof, appoint a receiver, in the manner provided for in section fifty-two hundred and thirty-four, to wind up its affairs. But this section shall not relieve any association from its liability to redeem its circulating notes at its own counter, at par, in lawful money on demand.”¹

§ 270. In 1874 it was enacted “that every association organized, or to be organized, under the provisions of the said act, and of the several acts amendatory thereof, shall at all times keep and have on deposit in the treasury of the United States, in lawful money of the United States, a sum equal to five per centum of its circulation, to be held and used for the redemption of such circulation; which sum shall be counted as a part of its lawful reserve, as provided in section two of this Act;² and when the circulating notes of any such associations, assorted or unassorted, shall be presented for redemption, in sums of one thousand dollars, or any multiple thereof, to the Treasurer of the United States, the same shall be redeemed in United States notes. All notes so redeemed shall be charged by the Treasurer of the United States to the respective associations issuing the same, and he shall notify them severally, on the first day of each month, or oftener, at his discretion, of the amount of such redemptions; and whenever such redemptions for any association shall amount to the sum of five hundred dollars, such association so notified shall forthwith deposit with the Treasurer of the United States a sum in United States notes equal to the amount of its circulating notes so redeemed. And all notes of national banks worn, defaced, mutilated, or otherwise unfit for circulation shall, when received by any Assistant Treasurer, or at any designated depository of the United States, be forwarded to the Treasurer of the United States for redemption as provided herein. And when such redemptions have been so reimbursed, the circulating notes so redeemed shall be forwarded to the respective associations by which they were issued; but if any of such notes are worn, mutilated, defaced, or rendered otherwise unfit for use, they shall be forwarded to the

Redemption
by U. S.
Treasurer.

¹ Act June, 1864, Sec. 32.

² Sec. 5191, Revised Statutes.

Comptroller of the Currency and destroyed and replaced as now provided by law: *Provided* That each of said associations shall reimburse to the treasury the charges for transportation, and the costs for assorting such notes; and the associations hereafter organized shall also severally reimburse to the treasury the cost of engraving such plates as shall be ordered by each association respectively; and the amount assessed upon each association shall be in proportion to the circulation redeemed, and be charged to the fund on deposit with the treasurer.”¹

Expense for
redeeming
notes.

§ 271. In 1882 the law was so amended “that the national banks which shall hereafter make deposits of lawful money for the retirement in full of their circulation shall at the time of their deposit be assessed for the cost of transporting and redeeming their notes then outstanding, a sum equal to the average cost of the redemption of national bank notes during the preceding year, and shall thereupon pay such assessment. And all national banks which have heretofore made or shall hereafter make deposit of lawful money for the reduction of their circulation shall be assessed and shall pay an assessment in the manner specified in section three of the Act approved June twentieth, eighteen hundred and seventy-four, for the cost of transporting and redeeming their notes redeemed from such deposits subsequently to June thirtieth, eighteen hundred and eighty-one.”²

§ 272. **Regulations concerning reserve and places of redemption.** The regulations concerning the reserve and the places for redeeming the circulating notes will be given in the next Chapter.

Voluntary
liquidation.
Rev. Stat.
Sec. 5220.

§ 273. “Any association may go into liquidation and be closed by the vote of its shareholders owning two-thirds of its stock.”³

How board
shall pro-
ceed.
Rev. Stat.
Sec. 5221.

§ 274. “Whenever a vote is taken to go into liquidation it shall be the duty of the board of directors to cause notice of this fact to be certified, under the seal of the association, by its president or cashier, to the Comptroller of the Currency, and publication thereof to be made for a period of two months in a newspaper published in the city of New York, and also in a newspaper published in the city or town in which the association is located, or if no newspaper is there published, then in the news-

¹ 18 Stat. at Large, 43 C. 1 S. Ch. 343, Sec. 3.

² Act July 12, 1882, Public Laws, 47 C. 1 S. Ch. 290, part of Sec. 8

³ Act 1864, Sec. 42.

paper published nearest thereto, that the association is closing up its affairs, and notifying the holders of its notes and other creditors to present the notes and other claims against the association for payment.”¹

§ 275. “Within six months from the date of the vote to go into liquidation, the association shall deposit with the Treasurer of the United States, lawful money of the United States sufficient to redeem all its outstanding circulation. The Treasurer shall execute duplicate receipts for money thus deposited, and deliver one to the association and the other to the Comptroller of the Currency, stating the amount received by him, and the purpose for which it has been received; and the money shall be paid into the treasury of the United States, and placed to the credit of such association upon redemption account.”²

Deposit of
lawful
money to
redeem
notes.
Rev. Stat.
Sec. 5222.

§ 276. “An association which is in good faith winding up its business for the purpose of consolidating with another association shall not be required to deposit lawful money for its outstanding circulation; but its assets and liabilities shall be reported by the association with which it is in process of consolidation.”³

Consolidat-
ing banks
need not re-
deem.
Rev. Stat.
Sec. 5223.

§ 277. “Whenever a sufficient deposit of lawful money to redeem the outstanding circulation of an association proposing to close its business has been made, the bonds deposited by the association to secure payment of its notes shall be re-assigned to it, in the manner prescribed by section fifty-one hundred and sixty-two. And thereafter the association and its shareholders shall stand discharged from all liabilities upon the circulating notes, and those notes shall be redeemed at the treasury of the United States.”⁴

Bonds shall
be re-as-
signed to
closed
banks.
Rev. Stat.
Sec. 5224.

§ 278. “Whenever the Treasurer has redeemed any of the notes of an association which has commenced to close its affairs under the [five]⁵ preceding sections, he shall cause the notes to be mutilated and charged to the redemption account of the association; and all notes so redeemed by the treasury shall, every three

Notes to be
destroyed.
Rev. Stat.
Sec. 5225.

¹ Act 1864, Sec. 42.

² Act 1864, Secs. 42, 43; Act July 14, 1870, 16 Stat. at Large 41 C. 2 S. Ch. 277.

³ Id.

⁴ Act 1864, Sec. 42.

⁵ The word “five” was substituted for six by Act of February 28, 1877.

months, be certified to and [destroyed]¹ in the manner prescribed in section fifty-one hundred and eighty-four.”² In 1875, Congress prescribed that the notes should be destroyed by maceration instead of burning to ashes.³

Proceedings
if bank shall
fail to take
up bonds.
Act Feb-
ruary 18,
1875.

§ 279. “And if any such bank shall fail to make the deposit and take up its bonds for thirty days after the expiration of the time specified, the Comptroller of the Currency shall have power to sell the bonds pledged for the circulation of said bank, at public auction in New York city, and, after providing for the redemption and cancellation of said circulation and the necessary expenses of the sale, to pay over any balance remaining to the bank or its legal representative.”⁴

Mode of pro-
testing
notes.
Rev. Stat.
Sec. 5226.

§ 280. “Whenever any national banking association fails to redeem in the lawful money of the United States any of its circulating notes, upon demand of payment duly made during the usual hours of business, at the office of such association, or at its designated place of redemption, the holder may cause the same to be protested, in one package, by a notary public, unless the president or cashier of the association whose notes are presented for payment, or the president or cashier of the association at the place at which they are redeemable offers to waive demand and notice of the protest, and, in pursuance of such offer, makes, signs, and delivers to the party making such demand an admission in writing, stating the time of the demand, the amount demanded, and the fact of the non-payment thereof. The notary public, on making such protest, or upon receiving such admission, shall forth with forward such admission or notice of protest to the Comptroller of the Currency, retaining a copy thereof. If, however, satisfactory proof is produced to the notary public that the payment of the notes demanded is restrained by order of any court of competent jurisdiction, he shall not protest the same. When the holder of any notes causes more than one note or package to be protested on the same day, he shall not receive pay for more than one protest.”⁵

¹ The word “destroyed” was substituted for “burned” by act of June 23, 1874.

² Act 1864, Sec. 32.

³ See note to Sec. 268.

⁴ 18 Stat. at Large, 43 C. 2 S. Ch. 80, p. 320.

⁵ Act 1864, Sec. 46.

§ 281. "On receiving notice that any national banking association has failed to redeem any of its circulating notes, as specified in the preceding section, the Comptroller of the Currency, with the concurrence of the Secretary of the Treasury, may appoint a special agent, of whose appointment immediate notice shall be given to such association, who shall immediately proceed to ascertain whether it has refused to pay its circulating notes in the lawful money of the United States, when demanded, and shall report to the Comptroller the fact so ascertained. If, from such protest, and the report so made, the Comptroller is satisfied that such association has refused to pay its circulating notes and is in default, he shall, within thirty days after he has received notice of such failure, declare the bonds deposited by such association forfeited to the United States, and they shall thereupon be so forfeited."¹

Examination by special agent.
Rev. Stat.
Sec. 5227.

§ 282. "After a default on the part of an association to pay any of its circulating notes has been ascertained by the Comptroller, and notice [thereof]² has been given by him to the association, it shall not be lawful for the association suffering the same to pay out any of its notes, discount any notes or bills, or otherwise prosecute the business of banking, except to receive and safely keep money belonging to it, and to deliver special deposits."³

After protest bank shall not continue business.
Rev. Stat.
Sec. 5228.

§ 283. "Immediately upon declaring the bonds of an association forfeited for non-payment of its notes, the Comptroller shall give notice, in such manner as the Secretary of the Treasury shall, by general rules or otherwise, direct to the holders of the circulating notes of such association, to present them for payment at the treasury of the United States; and the same shall be paid as presented in lawful money of the United States; whereupon the Comptroller may, in his discretion, cancel an amount of bonds pledged by such association equal at current market rates, not exceeding par, to the notes paid."⁴

Notice to holders of payment.
Rev. Stat.
Sec. 5229.

§ 284. "Whenever the Comptroller has become satisfied, by the protest or the waiver and admission specified in section fifty-two hundred and twenty-six, or by the report provided for in sec-

Sale of bonds at auction.
Rev. Stat.
Sec. 5230.

¹ Act 1864, Sec. 47.

² The word "thereof" was substituted for "forfeiture of the bonds" by act of February, 18, 1875.

³ Act 1864, Sec. 46.

⁴ Act 1864, Sec. 47.

tion fifty-two hundred and twenty-seven, that any association has refused to pay its circulating notes, he may, instead of canceling its bonds, cause so much of them as may be necessary to redeem its outstanding notes to be sold at public auction in the city of New York, after giving thirty days' notice of such sale to the association. For any deficiency in the proceeds of all the bonds of an association, when thus sold, to reimburse to the United States the amount expended in paying the circulating notes of the association, the United States shall have a paramount lien upon all its assets; and such deficiency shall be made good out of such assets in preference to any and all other claims whatsoever, except the necessary costs and expenses of administering the same."¹

§ 285. **Government has first lien.** With respect to the lien of the government on the assets of a bank for reimbursement in paying its circulating notes, it is paramount to that of an attaching creditor especially, when he has notice of the government's claim before making his attachment.²

§ 286. "The Comptroller may, if he deems it for the interest of the United States, sell at private sale any of the bonds of an association shown to have made default in paying its notes, and receive therefor either money or the circulating notes of the association. But no such bonds shall be sold by private sale for less than par, nor for less than the market value thereof at the time of sale; and no sales of any such bonds, either public or private, shall be complete until the transfer of the bonds shall have been made with the formalities prescribed by sections fifty-one hundred and sixty-two, fifty-one hundred and sixty-three, and fifty-one hundred and sixty-four."³

§ 287. "The Secretary of the Treasury may, from time to time, make such regulations respecting the disposition to be made of circulating notes after presentation at the Treasury of the United States for payment, and respecting the perpetuation of the evidence of the payment thereof, as may seem to him proper."⁴

§ 288. "All notes of national banking associations presented at the treasury of the United States for payment shall, on being paid, be canceled."⁵

Sale of
bonds pri-
vately.
Rev. Stat.
Sec. 5231.

Disposition
of notes re-
deemed.
Rev. Stat.
Sec. 5232.

Cancellation.
Rev. Stat.
Sec. 5233.

¹ Act 1864, Secs. 47, 48.

² Schmidt v. First National Bank, 22 La. Ann., 314.

³ Act 1864, Sec. 49.

⁴ Act 1864, Sec. 47.

⁵ Act 1864, Sec. 47.

§ 289. "All fees for protesting the notes issued by any national banking association shall be paid by the person procuring the protest to be made, and such association shall be liable therefor; but no part of the bonds deposited by such association shall be applied to the payment of such fees. All expenses of any preliminary or other examinations into the condition of any association shall be paid by such association. All expenses of any receivership shall be paid out of the assets, of such association before distribution of the proceeds thereof."¹

Fees for protesting, etc.
Rev. Stat.
Sec. 5238.

§ 290. "Associations may be organized in the manner prescribed by this Title for the purpose of issuing notes payable in gold; and upon the deposit of any United States bonds bearing interest payable in gold with the Treasurer of the United States, in the manner prescribed for other associations, it shall be lawful for the Comptroller of the Currency to issue to the association making the deposit circulating notes of different denominations, but none of them less than five dollars, and not exceeding in amount eighty per centum of the par value of the bonds deposited, which shall express the promise of the association to pay them, upon presentation at the office at which they are issued, in gold coin of the United States, and shall be so redeemable. But no such association shall have a circulation of more than one million of dollars."²

Banks for issuing gold notes.
Rev. Stat.
Sec. 5185.

§ 291. In 1875 Congress enacted "that so much of section five thousand one hundred and eighty-five of the Revised Statutes of the United States as limits the circulation of banking associations, organized for the purpose of issuing notes payable in gold, severally to one million dollars, be, and the same is hereby, repealed; and each of such existing banking associations may increase its circulating notes, and new banking associations may be organized, in accordance with existing law, without respect to such limitation."³

Repeal of limit on their circulation.
Act January 19, 1875.

§ 292. "Every association organized under the preceding section shall at all times keep on hand not less than twenty-five per centum of its outstanding circulation, in gold or silver coin of the United States; and shall receive at par in the payment of debts the gold notes of every other such association which at the time

Reserve on gold-note circulation.
Rev. Stat.
Sec. 5186.

¹ Act 1864, Sec. 50.

² Act July 12, 1870, 16 Stat. at Large, 41 C. 2 S. Ch. 252, Sec. 3.

³ 18 Stat. at Large, 43 C. 2 S. Ch. 19.

of such payment is redeeming its circulating notes in gold coin of the United States, and shall be subject to all the provisions of this Title: *Provided*, That, in applying the same to associations organized for issuing gold-notes, the terms 'lawful money' and 'lawful money of the United States' shall be construed to mean gold or silver coin of the United States; and the circulation of such associations, shall not be within the limitation of circulation mentioned in this Title."

^s Act July 12, 1870, 16 Stat. at Large, 41 C. 2 S. Ch. 252, Secs. 3, 4, 5

CHAPTER XI.

REGULATIONS CONCERNING THE RESERVE AND THE PLACES FOR REDEEMING THE
CIRCULATING NOTES.

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| § 293. Reserve required.
294. Reserve on circulation abolished except of gold-note banks.
295. Issue of gold certificates.
296. Receivable for taxes and bank reserve.
297. U. S. Treasury certificates may be issued and counted as reserve. | § 298. Certificates held as special deposit.
299. Remarks on the section by Davis, J.
300. Redemption cities and proportion of reserve allowed in them.
301. Extension of reserve cities.
302. Like New York. |
|---|---|

§ 293. The Revised Statutes provide that "every national banking association in either of the following cities: Albany, Baltimore, Boston, Cincinnati, Chicago, Cleveland, Detroit, Louisville, Milwaukee, New Orleans, New York, Philadelphia, Pittsburgh, Saint Louis, San Francisco, and Washington, shall at all times have on hand, in lawful money of the United States, an amount equal to at least twenty-five per centum of the aggregate amount of its [notes in circulation and its] deposits; and every other association shall at all times have on hand, in lawful money of the United States, an amount equal to at least fifteen per centum of the aggregate amount of its [notes in circulation, and of its] deposits. Whenever the lawful money of any association in any of the cities named shall be below the amount of twenty-five per centum of its [circulation and] deposits, and whenever the lawful money of any other association shall be below fifteen per centum of its [circulation and] deposits, such association shall not increase its liabilities by making any new loans or discounts otherwise than by discounting or purchasing bills of exchange payable at sight, nor make any dividend of its profits until the required proportion, between the aggregate amount of its [outstanding notes of circulation and] deposits and its lawful money of the United States, has been restored. And the Comptroller of the Currency may notify any association, whose lawful-money reserve shall be below the amount above required to be kept on hand, to make good such reserve; and if such association shall fail for thirty days thereafter so to make good its reserve of lawful money, the Comptroller may, with the concurrence of the Secre-

Reserve re-
quired.
Rev. Stat.
Sec. 5191.

tary of the Treasury, appoint a receiver to wind up the business of the association, as provided in section fifty-two hundred and thirty-four.”¹

Reserve on
circulation
abolished
except of
of gold-note
banks.
Act June 20,
1874.

§ 294. The above act which was numbered section thirty-one in the act of 1864 was amended in 1874, Congress declaring “that section thirty-one of the ‘National Bank Act’ be so amended that the several associations therein provided for shall not hereafter be required to keep on hand any amount of money whatever, by reason of the amount of their respective circulations; but the moneys required by said section to be kept at all times on hand shall be determined by the amount of deposits in all respects, as provided for in the said section.”²

Issue of gold
certificates.
Act July 12,
1882.

§ 295. In determining what kinds of money may enter into the reserve, the Act of 1882 provides “that the Secretary of the Treasury is authorized and directed to receive deposits of gold coin with the Treasurer or Assistant Treasurers of the United States, in sums not less than \$20, and to issue certificates therefor in denominations of not less than \$20 each, corresponding with the denominations of United States notes. The coin deposited for or representing the certificates of deposits shall be retained in the treasury for the payment of the same on demand.”³

Receivable
for taxes,
etc., and
bank re-
serve.

§ 296. “Said certificates shall be receivable for customs, taxes, and all public dues, and when so received may be reissued; and such certificates, as also silver certificates, when held by any national banking association, shall be counted as part of its lawful reserve; and no national banking association shall be a member of any clearing house in which such certificates shall not be receivable in the settlement of clearing house balances: *Provided*, That the Secretary of the Treasury shall suspend the issue of such gold certificates whenever the amount of gold coin and gold bullion in the treasury reserved for the redemption of United States notes falls below \$100,000,000; and the provisions of section fifty-two hundred and seven of the Revised Statutes shall be applicable to the certificates herein authorized and directed to be issued.”⁴

¹ Act 1864, Sec. 31, March 1, 1872; 17 Stat. at Large, 42 C. 2 S. Ch. 22.

² 18 Stat. at Large, 43 1C. S. Ch. 343, Sec. 2.

³ Public Laws, 47 C. 1 S. Ch. 290, Sec. 12.

⁴ Id., Sec. 13.

§ 297. "The Secretary of the Treasury may receive United States notes on deposit, without interest, from any national banking associations, in sums of not less than ten thousand dollars, and issue certificates therefor in such form as he may prescribe, in denominations of not less than five thousand dollars, and payable on demand in United States notes at the place where the deposits were made. The notes so deposited shall not be counted as part of the lawful money reserve of the association; but the certificates issued therefor may be counted as part of its lawful-money reserve, and may be accepted in the settlement of clearing-house balances at the places where the deposits therefor were made."¹

U. S. treasury certificates may be issued and counted as reserve.
Rev. Stat. Sec. 5193.

§ 298. "The power conferred on the Secretary of the Treasury, by the preceding section, shall not be exercised so as to create any expansion or contraction of the currency. And United States notes for which certificates are issued under that section, or other United States notes of like amount, shall be held as special deposits in the treasury, and used only for the redemption of such certificates."²

Certificates held as special deposits.
Rev. Stat. Sec. 5194.

§ 299. **Remarks on the section by Davis, J.** "By this Act," says Davis, J., "the Treasurer became a trustee charged with the care of the fund, which was to be held for one purpose only—that of redeeming the circulating notes. The bank having failed to redeem its notes passes into the hands of the Comptroller of the Currency, and the five per cent. fund becomes liable for the redemption of these notes, the contingency contemplated by the statute having arisen. But the Treasurer has no power over the fund, for the Comptroller is directed by section 5234 to take possession of assets of every description and section 5236 directs that after provision has been made for refunding to the United States any deficiency in redeeming the notes of such association the Comptroller shall make a ratable dividend among the creditors."³

§ 300. "Three-fifths of the reserve of fifteen per centum required by the preceding section to be kept, may consist of balances due to an association, available for the redemption of its

Redemption cities and proportion of reserve allowed in them.
Rev. Stat. Sec. 5192.

¹ Act June 8, 1872, 17 Stat. at Large, 2 C. 42 S. Ch. 346, Secs. 1, 2.

² Id., Sec. 3.

³ *Jackson v. United States*, 20 Ct. of Claims 298 p. 306. The Treasurer sought to direct a portion of this fund to pay a tax which the bank owed the government. This cannot be done.

circulating notes, from associations approved by the Comptroller of the Currency, organized under the act of June three, eighteen hundred and sixty-four, or under this Title, and doing business in the cities of Albany, Baltimore, Boston, Charleston, Chicago, Cincinnati, Cleveland, Detroit, Louisville, Milwaukee, New Orleans, New York, Philadelphia, Pittsburgh, Richmond, Saint Louis, San Francisco, and Washington. Clearing-house certificates, representing specie or lawful money specially deposited for the purpose, of any clearing-house association, shall also be deemed to be lawful money in the possession of any association belonging to such clearing-house, holding and owning such certificate, within the preceding section.”¹

Extension of
reserve
cities.

§ 301. In 1887 Congress further enacted “that whenever three-fourths in number of the national banks located in any city of the United States having a population of fifty thousand people shall make application to the Comptroller of the Currency, in writing, asking that the name of the city in which such banks are located shall be added to the cities named in sections, 5191 and 5192 of the Revised Statutes, the Comptroller shall have authority to grant such request, and every bank located in such city shall at all times thereafter have on hand, in lawful money of the United States, an amount equal to at least twenty-five per centum of its deposits, as provided in sections 5191 and 5195 of the Revised Statutes.”²

Like New
York.

§ 302. “That whenever three-fourths in number of the national banks located in any city of the United States having a population of two hundred thousand people shall make application to the Comptroller of the Currency, in writing, asking that such city may be a central reserve city, like the city of New York, in which one-half of the lawful money reserve of the national banks located in other reserve cities may be deposited, as provided in section 5195 of the Revised Statutes, the Comptroller shall have authority, with the approval of the Secretary of the Treasury, to grant such request, and every bank located in such city shall at all times thereafter have on hand, in lawful money of the United States, twenty-five per centum of its deposits, as provided in section 5191 of the Revised Statutes.”³

¹ Act 1864, Sec. 31.

² Public Laws, 49 C. 2 S. Ch. 378, Sec. 1.

³ Id. Sec. 2.

CHAPTER XII.

INTEREST.

What is Usury, and Consequences of Taking It.

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| § 303. Rate of interest permitted.
304. Consequences of taking illegal interest.
305. Analysis of statutes.
306. To what notes do statutes apply.
307. Individuals but not other banks may receive more than national.
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313. Usurious interest cannot be cured by crediting illegal portion.
314. If part of discount is not to be drawn is transaction usurious.
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Forfeiture of Interest.

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| § 316. Remarks of court on forfeiture.
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320. Bank director can plead usury. | § 321. Forfeiture recovered only in actions for principal.
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Recovery of Twice the Amount of Interest Paid.

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Usury on a Series of Notes.

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| § 329. How usury affects last note of a series.
330. Borrower cannot set-off illegal interest on former notes. | § 331. Nor can bank set off principal on last one in action on others. |
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Rights of Indorsers.

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| <p>§ 332. Any party to contract can avail of forfeiture.</p> <p>333. Indorser cannot use this defense to escape paying.</p> <p>334. Nor can antecedent parties.</p> | <p>§ 335. Indorser of valid note used as collateral to usurious, cannot interpose this defense.</p> <p>336. If indorser pay he cannot recover only legal sum of borrower.</p> <p>337. Nor can he recover twice the amount of lender.</p> |
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Pleading.

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| <p>§ 338. How usury must be pleaded.</p> | <p>§ 338(a). Remarks of Clerke, J.</p> |
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Rate of interest permitted.
Rev. Stat. Sec. 5197.

§ 303. "Any association may take, receive, reserve, and charge on any loan or discount made, or upon any note, bill of exchange, or other evidences of debt, interest at the rate allowed by the laws of the state, territory, or district where the bank is located, and no more, except that where by the laws of any state a different rate is limited for banks of issue organized under state laws, the rate so limited shall be allowed for associations organized or existing in any such state under this Title. When no rate is fixed by the laws of the state, or territory, or district, the bank may take, receive, reserve, or charge a rate not exceeding seven per centum, and such interest may be taken in advance, reckoning the days for which the note, bill, or other evidence of debt has to run. And the purchase, discount, or sale of a bona fide bill of exchange, payable at another place than the place of such purchase, discount, or sale, at not more than the current rate of exchange for sight drafts in addition to the interest, shall not be considered as taking or receiving a greater rate of interest."¹

Consequences of taking illegal interest.
Rev. Stat. Sec. 5198.

§ 304. "The taking, receiving, reserving, or charging a rate of interest greater than is allowed by the preceding section, when knowingly done, shall be deemed a forfeiture of the entire interest which the note, bill, or other evidence of debt carries with it, or which has been agreed to be paid thereon."² In case the greater rate of interest has been paid, the person by whom it has been paid, or his legal

¹ Act 1864, Sec. 30.

² "Usury forfeited the entire loan or debt under the Banking Act of Feb. 25, 1863. This, Congress thought, was too severe, and the Act of 1864

* * limits the forfeiture to the interest only." Gresham, J., *National Bank v. Davis*, 8 Biss., p. 103.

representatives, may recover back, in an action in the nature of an action of debt, twice the amount of the interest thus paid from the association taking or receiving the same; provided such action is commenced within two years from the time the usurious transaction occurred.”¹

§ 305. **Analysis of statutes.** The following analysis of the statutes relating to the subject has been made by Judge Swayne.² (1) “The rate of interest chargeable by such bank is to be that allowed by the law of the state or territory where the bank is situated.

(2) When, by the laws of the state or territory, a different rate is limited for banks of issue organized under the local laws, the rate so limited is allowed for the national banks.

(3) Where no rate of interest is fixed by the laws of the state or territory, the national banks may charge at a rate not exceeding seven per cent. per annum.

(4) Such interest may be reserved or taken in advance.

(5) Knowingly reserving, receiving, or charging a rate of interest greater than aforesaid shall be held and adjudged a forfeiture of the interest which the note, bill or other evidence of debt carries with it, or which has been agreed to be paid thereon.’

(6) If a greater rate has been paid, twice the amount so paid may be recovered back, provided suit be brought within two years from the time the usurious transaction occurred.

(7) The purchase, discount, or sale of a bill of exchange, payable at another place, at not more than the current rate of exchange on sight drafts, in addition to the interest, shall not be considered as taking or reserving a greater rate of interest than that permitted.

These clauses, examined by their own light, seem to us too clear to admit of doubt as to anything to which they relate. They form a system of regulations. All the parts are in harmony with each other, and cover the entire subject.”

§ 306. **To what notes do statutes apply.** In developing the meaning of these statutes, the question may be asked, To what notes or commercial paper do they apply? To this question the supreme tribunal of the land has replied that they

¹ Act 1864, Sec. 30.

² *Farmers & Mechanics' National Bank v. Dearing*, 91 U. S., 29 p. 32.

apply to discounts of business paper and also of accommodation paper.¹

§ 307. **Individuals but not other banks may receive more than national.** The law puts a national bank on as high a plane as a state bank in charging interest, though individuals may receive more.² Says Strong, J.: "National banks are authorized to reserve and take interest on loans made by them at such rates as are allowed by state law to state banks of issue in the states where the national banks are located. In reserving and taking interest at such rates they act within the authority given them; violate no law, and render themselves liable to no penalties."³

The reason for this regulation is that "it was expected they would come into competition with state banks, and it was intended to give them at least equal advantages in such competition. In order to accomplish this they were empowered to reserve interest at the same rates, whatever those rates might be, which were allowed to similar state institutions."⁴

§ 308. **Clause uniformly interpreted.** This interpretation of the law has been quite uniform. In *National Bank v. Bruhn*,⁵ Willie, C. J., said: "The general rule established by this section is that national banks may charge as high a rate of interest as is allowed by the laws of the state or territory where the bank is located. Under this rule no doubt can exist but that the appellant bank was authorized to charge two per cent. per month interest upon the note in suit, as that rate was then allowed by the laws of this state. Was this right restrained by any of the subsequent provisions of this section? The only exception to this general rule as announced in the act of Congress is when, by the laws of a state, a different rate is limited for banks of issue organized under the state laws; in that case the rate so limited is to be allowed to national banks located in such state. * * * The only other clause in the section that regulates the rate is that which provides that where no rate is fixed by the laws of the state

¹ *National Bank v. Johnson*, 104 U. S., 271 p. 277, affg 74 N. Y., 329.

² *Shunk v. First National Bank*, 22 Ohio, 508.

³ Strong, J., *First National Bank v. Duncan*, U. S. Circuit Court, 6 Week. Notes, 159 p. 160; *National Bank v. Johnson*, 104 U. S., 271.

⁴ *Tiffany v. National Bank*, 18 Wall, 408 p. 412.

⁵ 74 Texas, 570 p. 576.

or territory or district, the bank may reserve a rate not exceeding seven per centum. This is no exception to the general rule already stated, but provides for a class of cases not included in it."

§ 309. **In re Wild.** A national bank in New York city made a loan there to a corporation which, if it had been made to an individual, would have been usurious under the law of the state, as the loan exceeded the legal rate of seven per cent. per annum. But a statute of that state also forbids a corporation to interpose the defense of usury. The effect of this statute, as interpreted by the highest court of the state, is that the rate of interest which a corporation may pay is not fixed or limited. Nevertheless, as the rate of interest exceeded seven per cent., the transaction was within the prohibition of the National Banking Law and the entire interest was forfeited.¹

§ 310. **Opinion of Supreme Court of California.** In California, the courts have declared that banks may charge as much interest as is allowed by the local laws to any person whatever. Says Judge Ross:² "The true interpretation of the Act of Congress is, that in those states and territories having no statute upon the subject of interest, the national banks are allowed a rate not exceeding seven per centum, while in those states and territories having a statute on the subject they are authorized to charge and receive interest at the rate allowed other banks and individuals. From this view it follows that inasmuch as we have in California a statute providing 'that parties may agree in writing, for the payment of any rate of interest, and it shall be allowed according to the terms of the agreement until the entry of judgment,' the national banks are also allowed to charge and receive such rates of interest as may be agreed on."

§ 311. **Rate of a few chartered banks does not fix rate for all.** If the general rate of interest which can be taken by state banks is fixed, the establishing of a few banks by charter to take more than this amount will not justify a national bank in taking usurious interest under the clause which permits them to charge interest at the same rate as banks of issue organized under the laws of the state where the national bank is situated.³

¹ 11 Blatchf., 243.

² *Hinds v. Marmolejo*, 60 Cal., 229; *Farmers' National Gold Bank v. Stover*, Id., 387.

³ *Gruber v. First National Bank*, 87 Pa., 465; *First National Bank v. Gruber*, Id., 468.

§ 312. **Interest on note made in one state and discounted in another.** If a note be discounted in a state where it was not made, the law of the state in which the discounting occurred is to be applied to determine the question of usury. Thus a note was made and signed at Washington, but dated at L, in Kansas, and sent to a bank there to be discounted. It was decided to be governed by the law of that state.¹ But the making of such a note must not be a mere device to evade the usury law of the state where the money is to be repaid, and where the rate of interest is lower than was taken.²

§ 313. **Usurious interest cannot be cured by crediting illegal portion.** If a note which is given in renewal of a usurious one, and covering the usurious interest, is itself tainted with usury, although bearing only the legal rate of interest, it cannot be purged of the usury by crediting the amount thereon as a payment without the concurrence of the maker.³

§ 314. **If part of discount is not to be drawn is transaction usurious.** Is the discounting of a note on condition that a portion of the proceeds shall remain in the bank usurious? A note for \$6,000 was drawn by B in favor of S, and indorsed by him, which was discounted for B on condition that \$1,000 should remain to be paid on the note when due, which would be in sixty days. B gave his check for \$1,000 to the cashier, which was not charged to his account. Having assigned and been declared a bankrupt, it was held the check reduced S's liability to \$5,000, as though the note had been given for that sum, and that the transaction was not contrary to the national usury law.⁴

§ 315. **Nature of the two offenses.** The offenses defined and denounced by the law are twofold: First, "where illegal interest has been knowingly stipulated for but not paid, there only the sum lent without interest can be recovered;"⁵ and second,

¹ Second National Bank v. Smoot, 2 MacArthur, 371.

² Id.

³ National Bank v. Eyre, 52 Iowa, 114; Farmers & Mechanics' Bank v. Hoagland, 7 Fed. R., 159.

⁴ First National Bank v. Gish, 72 Pa., 13. Concerning the validity of a mortgage given to secure a usurious note, see Ch. 4, § 91.

⁵ The only forfeiture declared by this section is of the entire interest which the note, bill, or other evidence of debt, carries with it, or which has been agreed to be paid thereon, when the rate knowingly received, reserved, or charged by a national bank is in excess of that allowed by that section; and

"where such illegal interest has been paid, then twice the amount so paid can be recovered in a penal action of debt or suit in the nature of such action against the offending bank, brought by the persons paying the same, or their legal representatives."¹ Moreover, these regulations supersede any state laws relating to the subject.²

§ 316. **Remarks of court on forfeiture.** Concerning the first offense Judge Gresham has remarked: "If a national bank discount a note at a usurious rate of interest, paying the borrower the proceeds less the interest, and suit be brought to recover the loan, and the borrower plead the usury, the bank will recover the face of the note less the entire interest taken out, received or reserved, and no more. It will thus collect the sum of money it actually paid out, being punished for receiving interest in excess of the legal rate by forfeiting all interest."³ The New York Court of Appeals has also remarked, that "when a note is discounted, the amount reserved for the discount is the interest reserved. In most cases it is not then paid. The borrower re-

no loss of the entire debt is incurred by such bank, as a penalty or otherwise, by reason of the provisions of the usury law of a state. *Farmers & Mechanics' Nat. Bank v. Dearing*, 91 U. S., 29; *Central National Bank v. Pratt*, 115 Mass., 539; *Davis v. Randall*, Id., 547; *Brown v. Second National Bank*, 72 Pa., 209; *First National Bank v. Garlinghouse*, 22 Ohio, 492; *Wiley v. Starbuck*, 44 Ind., 298. "The forfeiture is expressly limited to the interest which the note, bill or other evidence of debt carries with it, or which has been agreed to be paid thereon. In thus limiting the forfeiture to the interest, the right of the bank to the principal is necessarily implied," *White*, C. J., *First National Bank v. Garlinghouse*, 22 Ohio, 492 p. 502.

¹ *Barnet v. National Bank*, 98 U. S., p. 558. In New York the second clause of this section was at first construed as meaning that twice the amount of the interest paid in excess of the legal rate might be recovered, and not twice the amount of the entire interest, *National Bank v. Lamb*, 50 N. Y., 95; *Farmers' Bank v. Hale*, 59 Id. 53; but these decisions were overruled in *Hintermister v. First National Bank*, 64 id., 212, modifying 3 Hun, 345, S. C., 5 Th. & C., 484; and following the decision in *Farmers & Mechanics' Nat. Bank v. Dearing*, 91 U. S., 29; *Crocker v. First National Bank*, 4 Dill., 358.

² *Central National Bank v. Pratt*, 115 Mass., 539; *Davis v. Randall*, Id., 547; *Merchants & Farmers' Nat. Bank v. Myers*, 74 N. Car., 514; *First National Bank v. Garlinghouse*, 22 Ohio, 492; *Higley v. First National Bank*, 26 Ohio, 75; See *First National Bank v. Lamb*, 50 N. Y., 95; *Citizens National Bank v. Leming*, 8 Int. Rev. Record, 132; *Hintermister v. First National Bank*, 64 N. Y., p. 215; *Cake v. First National Bank*, 86 Pa., 303.

³ *National Bank v. Davis*, 8 Biss., 100 p. 102.

ceives the sum called for by the note less the amount reserved for the discount. This is not paid until the note is paid. It is interest, and it is interest which the note carries with it. If it be a discount at a usurious rate, it is forfeited by reason of the federal statute. In a suit on the note, it may not be recovered. It is to be held and adjudged forfeited."¹ Nor is the forfeiture limited to cases in which notes carry interest on their face.²

§ 317. **Subsequent interest is forfeited.** Not only is the interest which accrues before maturity forfeited but also the subsequently accruing interest. Says McIlvaine, J.: "It is made the duty of the court having jurisdiction of an action brought on a note, bill or other evidence of debt, discounted by a national bank at a rate of interest greater than that allowed by law or if an agreement has been made to pay such greater rate of interest thereon, to hold and adjudge the entire interest which the note, bill, or other evidence of debt carries with it or which has been agreed to be paid thereon, to be forfeited; as well, the interest accruing after maturity and before judgment, as the interest which accrued before the maturity thereof."³

§ 318. **Excess must be proved to work forfeiture.** A forfeiture will not be declared unless it can be clearly proved

¹ *National Bank v. Lewis*, 81 N. Y., 15 p. 20; *Brown v. Second National Bank*, 72 Pa., 209; *Overholt v. National Bank*, 82 id., 490; *Lucas v. Government National Bank*, 78 id., 228. "Under the act of Congress no interest can be recovered upon a usurious contract, while by the law of Pennsylvania the legal interest can be recovered, but no more. While the former uses the word 'forfeiture,' and is penal to the extent of the interest, it does not make the entire contract void or even voidable." The court in *Appeal of Second National Bank of Titusville*, 6 Week. Notes, 153.

² *National Bank v. Lewis*, 75 N. Y., 516.

³ *Shunk v. First National Bank*, 22 Ohio, 508 p. 512. "When usurious interest has been received for discounting a note which is not paid at maturity, the interest on the same is forfeited from time it matured until judgment is rendered, in the event of suing to recover the amount of the note." Says McKennan, J.: "The 'entire' interest which the note 'carries with it' is forfeited; and if this means all the interest which accrues upon it, as I think it clearly does, it is difficult to understand how any part of it is recoverable. By the operation of the act an usurious contract is inherently vicious, so that it cannot 'carry' any interest 'with it'; hence it would inadequately effectuate, the intent of the act to hold that such a contract is purged of its taint, and is invested with a capacity denied to it before by the failure of the debtor to pay the debt, evidenced by it at maturity," *First National Bank v. Stauffer*, 1 Fed. R., 187.

that the bank knowingly received or reserved an amount in excess of the statutory rate of interest. In *Wheeler v. National Bank*,¹ an action was brought by the bank on a bill of exchange which had been indorsed by Wheeler. He defended on the ground of usury, but the record furnished no evidence of a distinct agreement concerning the amount of interest or exchange to be reserved by the bank when discounting the bill. Said Harlan, J.:² "The statute should be liberally construed to effect the ends for which it was passed; but a forfeiture under its provisions should not be declared unless the facts upon which it must rest are clearly established * * There is no proof of the rate of exchange; and since the courts uniformly incline against the declaration of a forfeiture, the party seeking such declaration should be held to make convincing proof of every fact essential to forfeiture."

§ 319. **Usurious interest on overdraft.** If a national bank should charge usurious interest on an overdraft, it could recover no interest whatever.³ And if a suit should be brought by a bank on a note held as collateral for an overdraft the suit would actually be to recover the overdraft of the makers of the note as sureties.⁴ Consequently, if usurious interest had been charged on the overdraft, this must be deducted from the total amount of the overdraft.⁵ And if there had been monthly and stated accounts between the bank and the one from which the overdraft was due, this fact would not affect the right of the sureties to have the usurious interest deducted.⁶ Nor would the fact that the bank owning the overdraft charged its customers usurious interest in the same transaction preclude the defense of usury by the sureties.⁷

§ 320. **Bank director can plead usury.** In employing usury as defense can a bank director, whose note has been discounted in his own bank, interpose this defense like other persons? In Ohio it has been decided that this can be done. Says Okey, J., in *Bank v. Slemmons*:⁸ "The principal in all the notes was no more estopped from setting up the illegality by reason of his position as director than if he had not been officially connected with the bank."⁹

¹ 96 U. S., 268.² Id., p. .³ *Third National Bank v. Miller*, 7 Week. Notes, 496.⁴ Id.⁵ Id.⁶ Id.⁷ Id.⁸ 34 Ohio, 142.⁹ *Goudy v. Gebbart*, 1 Id., 262.

§ 321. **Forfeiture recovered only in actions for principal.** It may be further remarked that the forfeiture can be enforced only in actions for the recovery of the principal.¹

§ 322. **Borrower may interpose defense in state court.** The borrower may interpose this defense in a state court. Says the Supreme Court of Iowa: "We are disposed to think that it would be carrying the doctrine too far to hold that a borrower of money from a national bank at a rate of interest which is usurious cannot, where sued by the bank in a state court to recover interest, maintain the plea of usury as a defense in the same court. No court, so far as we have been able to discover, has so held."²

§ 323. **Time when defense must be made.** Concerning the time of interposing this defense two answers have been given by the courts. One answer is that the defense must be made within two years from the time the loan was made;³ and the other answer is that this proviso "relates, exclusively, to actions brought to recover money paid, and not to a defense against a recovery; because, if intended to apply to the defense against usury, it would give to the party holding a usurious contract the advantage of cutting off the defense by postponing his suit until after the two years expired."⁴ This construction of the law, by Judge Walker, of the Supreme Court of Arkansas, is certainly far more rational than the other.

§ 324. **Can action for twice the amount be brought in state court.** With respect to recovering twice the amount of the interest paid, the leading question has been whether the action could be brought in a state court. As penal actions generally can be brought only within the jurisdiction whence they spring, and as this action has been regarded as a penal one, on several occasions the state courts have declined to enforce it. But these have been exceptional. In some of the cases, even while admitting that the action was of a penal nature, the state courts have not hesitated to enforce it. In other cases the action has been regarded like any action for the recovery of a debt, and quite free from every punitive feature. One of the best considered cases in which the right of the state to enforce such an action was main-

¹ *Hintermister v. First National Bank*, 64 N. Y., p. 215.

² *National Bank v. Eyre*, 52 Iowa, 114 p. 116.

³ *Higley v. First National Bank*, 26 Ohio, 75.

⁴ *Pickett v. Merchants' National Bank*, 32 Ark., 346 p. 366.

tained arose in Pennsylvania. In *Bletz v. Columbia National Bank*¹ Agnew, C. J., after quoting the act said: "Here we find no declaration of a forfeiture as such, but a provision to recover back money paid in an action of debt. This vests a right in the borrower of reclamation in a common law form of action, to be brought by himself and in his own right. It is not a penalty to be adjudged to the United States, or vested in the public, for which any citizen may sue. The form of action is within the jurisdiction of the state court, and the right claimed in this form is private, belonging to the borrower alone. It is, therefore, immaterial whether the source of the right is a state or federal law. In either case it is a law binding on the state, which has given birth to the right."²

§ 325. **Remarks of Boynton, J.** Likewise Boynton, J., in reviewing *Claffin v. Houseman*,³ said: "The statutes of the United States are as much the law of the land in any state as are those of the state, and although exclusive jurisdiction may be given to the federal courts, yet where it is not so given, either expressly or by necessary implication, the state courts, having competent jurisdiction in other respects, may be resorted to."⁴ And again, "Congress has, in many instances, professed in direct terms to invest state tribunals with power to enforce penalties incurred exclusively in the violation of the laws of the United States."⁵

§ 326. **Contrary opinions.** But some of the state courts have decided that this action to recover twice the amount of interest must be brought in a federal court. It is manifest, says the Supreme Court of Iowa, that this provision of the law "is more strictly penal in its character than the provision which simply allows usury to be pleaded as a defense."⁶ So Lindsay, J., speaking for the highest court in Kentucky, declared that the courts of that state had not "undertaken to enforce penalties arising under the laws of the government of the United States," and

¹ 87 Pa., 87, p. 94.

² *Gruber v. First National Bank*, 87 Pa., 465; *First National Bank v. Gruber*, 87 Id., 468; *Ordway v. Central National Bank*, 47 Md., 217; *Dow v. Irasburg National Bank*, 50 Vt., 112; *Pickett v. Merchants' National Bank*, 32 Ark., 346.

³ 93 U. S., 130.

⁴ *Hade v. McVay*, 31 Ohio, 231 p. 236.

⁵ Id., p. 235.

⁶ *National Bank v. Eyre*, 52 Iowa, p. 117.

that the forfeitures prescribed in the act were "highly penal in their nature."¹ In Tennessee the Supreme Court at first decided that the action could be tried in a state court,² but afterward changed their opinion,³ on the authority of a decision of the United States Supreme Court.⁴

§ 327. Right of legal representative to recover. The right to recover double the interest paid does not extend to a judgment creditor of the borrower, "as he is in no sense the debtor's legal representative."⁵ But an assignee in bankruptcy of the borrower is his "legal representative," and he can recover the usurious interest. The right of action is a "claim" or "debt" which passes to the assignee.⁶

§ 328. Action must be brought within two years. The action to recover the usurious interest must be brought within two years from the time of paying it.⁷ "The taking or charging a usurious rate," says Sedgwick, J., "is to be held a forfeiture of the entire interest, and if a usurious rate has been paid, twice its amount may be recovered back, provided the action has been begun within two years. An entire scheme of protection, involving a policy peculiar to it, is thus given to a borrower. In case the interest has been paid, twice the amount of the usurious rate may be recovered, and in all other cases the bank forfeits all right to the interest."⁸ In a Pennsylvania case the court said that "it is difficult to imagine a case where the statute does

¹ Newell v. National Bank, 12 Bush, 57 p. 59.

² Steadman v. Redfield, 8 Baxt., 337.

³ Hambright v. Cleveland National Bank, 3 Lea, 40; Barrett v. National Bank, 85 Tenn., 426.

⁴ In *Barnet v. National Bank*, 98 U. S., p. 559, Swayne, J., remarked: "The remedy given by the statute for the wrong is a penal suit. To that the party aggrieved, or his legal representative, must resort. He can have no redress in no other mode or form of procedure. The statute which gives the right prescribes the redress, and both provisions are alike obligatory upon the parties."

⁵ Barrett v. National Bank, 85 Tenn., 426.

⁶ Wright v. First National Bank, 8 Biss., 243; see *Tiffany v. National Bank*, 18 Wall., 409; *Crocker v. First National Bank*, 4 Dill., 358; *Barbour v. National Exchange Bank*, 12 N. E. Rep., 51; *National Bank v. Trimble*, 40 Ohio, 629.

⁷ *Gruber v. First National Bank*, 87 Pa., 465; *National Bank v. Davis*, 8 Biss., 100; *National State Bank v. Boylan*, 2 Abb., N. Cases, 216; *Pickett v. Merchants' National Bank*, 32 Ark., 346.

⁸ *National State Bank v. Boylan*, 2 Abb. N. Cases, p. 220.

not begin to run from payment of the usurious money, for the owner almost necessarily has knowledge of the fact from the first."¹

§ 329. **How usury effects last note of a series.** Whenever the note sued is the last of a series of renewed notes, and the original was usurious, the taint of usury affects the whole, the forfeiture of the entire interest, therefore, follows and credit must be given for all that has been paid from the beginning on the loan.² And if usurious interest be carried into a general account, and is made a part of a sum found due on final settlement for which a note is given, it taints the entire contract with usury; and it matters not that the usurious interest was charged with the tacit consent of the debtor in stating monthly accounts, or by a note substituted for the one previously given.³

§ 330. **Borrower cannot set off illegal interest on former notes.** The borrower, however, cannot set-off or apply the interest which he has paid on the former notes in payment of the principal of the last of the series. In *Driesback v. National Bank*,⁴ the Chief Justice said: "The claim is not for interest stipulated for and included in the notes sued on, but for the application of what has actually been paid as interest to the discharge of the principal. This we held in *Barnet v. National Bank*,⁵ could not be done." In some cases it has been.⁶ But this is not the correct rule.⁷ The remedy for the borrower is an action of debt to recover twice the amount of interest that he has paid,⁸

¹ *Stephens v. Monongahela National Bank*, 7 Week. Notes, 491 p. 496.

² *National Bank v. Lewis*, 75 N. Y., 516; *Overholt v. National Bank*, 82 Pa., 490; *Tuthill v. Davis*, 20 Johns R., 286; *Cake v. First National Bank*, 86 Pa., 303; *Brown v. Second National Bank*, 72 Id., 209; *Bank v. Slemmons*, 34 Ohio, 142; *National Bank v. Davis*, 8 Biss., 100.

³ *Pickett v. Merchants' National Bank*, 32 Ark., 346.

⁴ 104 U. S., 52.

⁵ 98 U. S., 555.

⁶ *Lucas v. Government National Bank*, 78 Pa., 228; *Overholt v. National Bank*, 82 id., 490; *Cake v. First National Bank*, 86 Id., 303; *Stephens v. Monongahela National Bank*, 7 Week. Notes, 491; *Hade v. McVay*, 31 Ohio, 231; *National Bank v. Davis*, 8 Biss., 100.

⁷ *National Bank v. Lewis*, 81 N. Y., 15, second trial; *Farmers & Mechanics' Bank v. Hoagland*, 7 Fed. R., 159.

⁸ *Barnet v. National Bank*, 98 U. S., 555; *National Bank v. Dushane*, 38 Leg. Int. 141, 39 Id., 280.

In *National Bank v. Davis*,¹ Judge Gresham said that if a note "discounted be renewed for the same amount, the borrower paying usurious interest out of his pocket in advance, and suit be brought on the renewed note, the defendant may recoup double the amount of the entire interest actually paid on renewal, or in an independent action of debt he may recover from the bank double the amount of the entire interest thus paid." It is certain that he could recover in an action for the interest, but it is quite as certain that the interest could not be recouped or deducted from the principal in an action to recover it.

§ 331. **Nor can bank set off principal on last one in action on others.** Neither can a bank set off the principal which may be due on the last of a series of usurious notes in an action to recover twice the amount of interest that has been paid. Thus the receiver of M's property sought to recover the penalties incurred by a national bank by taking unlawful interest of him. For two years preceding the action the bank had discounted M's notes at the rate of thirteen per cent. per annum. They had all been paid except the last one. It was held that usurious interest had been paid to the bank, and that the balance due from M on the last note could not be set-off against the amount due from the bank for the penalties.²

§ 332. **Any party to contract can avail of forfeiture.** Any party to a usurious contract, against whom payment is sought to be enforced, can avail himself of this defense.³ Hence an accommodation indorser has the same right as the maker to the benefit of the forfeiture by way of set-off or rebatement when sued alone on his indorsement.⁴ The right of such an indorser without consideration to the same benefit as a maker would have by way of set off or rebatement of the interest usuriously taken on a note discounted, is, said Judge Miller, of the New York Court of Appeals, "I think, well settled. * * There appears to be

¹ 8 Biss., p. 102.

² *Morehouse v. Second National Bank*, 30 Hun, 628.

³ *National Bank v. Lewis*, 75 N. Y., revsg 10 Hun, 468.

⁴ *National Bank v. Lewis*, 75 N. Y., 516; *National Exchange Bank v. Moore*, 2 Bond, 170; *Brown v. Second National Bank*, 72 Pa., 209; *Cake v. First National Bank*, 86 Id., 303. In New York the term borrower includes any person who is a party to the original contract, or in any way liable to pay the loan. *National Bank v. Lewis*, 75 N. Y., 516; *Wheelock v. Lee*, 64 N. Y., 242.

no reason why he is not entitled to the same defenses as the maker may have. Section 5198 declares that there shall be a forfeiture, without confining it to the maker, and it is a reasonable presumption that it should be for the benefit of any one who might be compelled to pay the obligation. We think it certainly applies to a party who has been sued upon the note and against whom alone a remedy is sought by an action to recover the amount of the same."¹

§ 333. **Indorser cannot use this defense to escape paying.** But the receiving of usurious interest from an indorser on notes discounted by it, whose payment should be guaranteed in writing would not avoid the contract of guaranty between the guarantor and the bank.²

§ 334. **Nor can antecedent parties.** So, too, if a note or bill be an existing security in the hands of the holder, the usury exacted by the bank in taking it cannot be used as a defense by the antecedent parties. Their rights and liabilities are not affected by the usurious character of a transaction in which they did not participate.³ The person with whom the bank had the usurious transaction is the one to whom the forfeiture of interest is to be adjudged.⁴ So usury will not avoid a contract with respect to the surety beyond the point at which the principal is relieved. In the case of *First National Bank v. Garlinghouse*,⁵ it was decided that in the absence of any intention to practice a fraud on the sureties, they must be held to have trusted to the judgment and discretion of the principal as to the terms on which the note might be discounted.

§ 335. **Indorser of valid note used as collateral to usurious, cannot interpose this defense.** An indorser on a note taken as collateral security for the payment of another, which is infected with usury, cannot defend against the note thus indorsed by him that the contract of indorsement is void. Thus M was indebted to a bank on which he paid usurious interest. It

¹ *National Bank v. Lewis*, 75 N. Y., 516 p. 522; see *In re Wild*, 11 Blatchf., 243; *National Exchange Bank v. Moore*, 2 Bond., 170; *Brown v. Second National Bank*, 72 Pa., 209; *Cake v. First National Bank*, 86 Id., 303.

² *Lazear v. National Union Bank*, 52 Md., 78.

³ *Smith v. Exchange Bank*, 26 Ohio, 141.

⁴ *Id.*

⁵ 22 Ohio, 492, revsg Ct. of Com. Pleas, 3 Am. Law Times, 301.

was extended several times, he paying such interest as in the beginning. Finally, at the request of the bank, he gave as collateral security the note of O, indorsed by himself. In a suit against O he was declared liable. "If we should declare the contract of indorsement void," said Judge Harlan, "and, consequently, that no right of action passed to the bank on the note transferred as collateral security, an additional penalty would thus be added beyond those imposed by the law itself."¹

§ 336. If indorser pay he cannot recover only legal sum of borrower. If an indorser should pay the whole note, including the usurious interest, he could recover of the maker only the original amount. "He must submit to the same penalty as would the bank for trusting to the honor of the principal to pay loans tinctured with usury."²

§ 337. Nor can he recover twice the amount of lender. Although the maker of a note can recover usurious interest that he has paid, the indorser does not have such a right. Neither has the indorser of a note which has been given in settlement of former loans tainted with usury, on which he was also an indorser, but not a borrower, nor paid any interest, a cause of action therefor.³

§ 338. How usury must be pleaded. In an action by a national bank on a promissory note, the answer alleged that the note was presented by its makers to the bank for discount for their sole benefit, which the bank knew, that it discounted the note and "then and there knowingly, corruptly and usuriously deducted therefrom and took, received, reserved, or charged by way of discount and * * * for the loan or forbearance of the sum of money secured by said note," a sum of money much greater than seven per cent. for the time the note had to be run, "to wit, the sum of \$160 or thereabouts," and asked that the interest paid and that which the note carried should be adjudged to be forfeited. The answer was regarded as setting forth a corrupt and usurious agreement, and was therefore a good plea of usury.⁴ In this case the court, speaking through Judge Miller said: "It cannot be denied that in interposing the defense of usury, it must

¹ Oates v. National Bank, 100 U. S., 239 p. 250.

² Citizens' National Bank v. Leming, 8 Int. Rev. Record, 132.

³ Bly v. Second National Bank, 79 Pa., 453.

⁴ National Bank v. Lewis, 75 N. Y., 516.

be pleaded with such precision and certainty as to make out, on the face of the pleading, that a corrupt and usurious contract has been entered into. * * The facts stated show that the note was offered for discount; that there was a corrupt agreement between the plaintiff and the makers in reference to the interest; that the amount of interest agreed upon was usurious and greater than seven per cent., and that such agreement was intentionally in violation of the statute, and hence was corrupt and usurious; and that the plaintiff received the interest and paid the amount, after deducting the same, to the maker. These in connection with the other allegations stated, show beyond question that this was done by the consent of the borrower, for it is apparent, under the circumstances, that he could not have received it otherwise.”¹

§ 338(a). **Remarks of Clerke, J.** When usury is the defense, “the usurious contract should be so pleaded as that it may appear what rate or amount of interest was taken or secured, and on what sum, and for what time; and the answer should show a corrupt intent. When these appear from the terms of the answer, nothing further is necessary to make it sufficiently definite.”²

¹ National Bank v Lewis, 75 N. Y., p. 519.

² Clerke, J., National Bank v. Orcutt, 48 Barb., 256, p. 257.

CHAPTER XIII.

SUIT BY AND AGAINST NATIONAL BANK.

Jurisdiction Under the Acts of 1882 and 1887.

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| <p>§ 239. In what court.
 240. Citizenship of bank.
 241. Suit by government may be in federal court.
 242. Meaning of the two Acts.</p> | <p>§ 242. (a) When foreign bank may be sued in state court.
 243. Tax suit may be in federal court.
 244. Bill of revivor.
 245. Suit by receiver.
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Jurisdiction Before Act of 1882.

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| <p>§ 247. Acts of 1863 and '64.
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 249. Bank's right to sue was by National Banking Act.
 250. Suits limited to federal court by McKennan, J.
 251. His construction wrong.
 252. Opinions of N. Y. and Ill. courts.
 253. Bank is citizen of state and could be sued in state court.
 254. Remarks of Barnard, P. J.
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 256. Bank could sue in federal court within or outside its district.</p> | <p>§ 257. Could not be sued outside its district.
 258. Receiver's right to sue in federal court.
 259. Can other than usury cases be brought under section 5198?
 260. Cannot sue for less than \$500 in federal court. Exception.
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 262. Chatham National Bank v. Merchants' National Bank.
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Suit Against Bank in Voluntary Liquidation.

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| <p>§ 265. Right to sue in state court bank in voluntary liquidation.</p> | <p>§ 266. Can be sued though having a receiver.</p> |
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Conduct of Government Suits.

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| <p>§ 267. U. S. district attorney to conduct them.</p> | <p>§ 268. Meaning of the statute.</p> |
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§ 239. By the National Bank Act national banks have power "to sue and be sued, complain and defend, in any court of law and [or] equity, as fully as natural persons."¹ And the proviso of the fourth section of the Act for extending the life of national banks declares "that the jurisdiction for suits hereafter brought by or against any association established under any law providing for national-banking associations, except suits between them and the United States, or its officers and agents, shall be the same as, and not other than, the jurisdiction for suits by or against banks not organized under any law of the United States which do or might do banking business where such national-banking associations may be doing business when such suits may be begun: And all laws and parts of laws of the United States inconsistent with this proviso be, and the same are hereby, repealed."²

In what courts.
Act July 12, 1882.

§ 240 And in 1887 Congress further enacted "that all national banking associations established under the laws of the United States shall, for the purposes of all actions by or against them, real, personal or mixed, and all suits in equity, be deemed citizens of the states in which they are respectively located; and in such cases the circuit and district courts shall not have jurisdiction other than such as they would have in cases between individual citizens of the same state."

Citizenship of banks.

§ 241. "The provisions of this section shall not be held to affect the jurisdiction of the courts of the United States in cases commenced by the United States or by direction of any officer thereof, or cases for winding up the affairs of any such bank."³

Suit by government may be in federal court.
Act March 3, 1887.

§ 242. **Meaning of the two acts.** Until the enacting of the Law of 1882 litigation had been frequent concerning the right of a national bank to sue, and liability to a suit in the state and national courts. But that Act "repeals," says Judge Harlan,⁴ "in express terms all 'laws and parts of laws of the United States' inconsistent with its provisions, and enacts that jurisdiction for suits thereafter brought by or against national banks, with few exceptions, 'shall be the same as, and not other than, the jurisdiction for suits by or against banks not organized under any law of the

¹ Rev. Stat., Sec. 5136, clause fourth.

² Public Laws, 47 C. 1 S. Ch. 290, part of Sec. 4.

³ Public Laws, 49 C. 2 S. Ch. 373, Sec. 4.

⁴ *Leather Manufacturers' Bank v. Cooper*, 120 U. S., p. 780, affg 28 Fed. R. 161.

United States' doing business where the national 'bank may be doing business when such suits may be begun.' This was evidently intended to put national banks on the same footing as the banks of the state where they were located for all the purposes of the jurisdiction of the courts of the United States." Likewise Judge Baxter has remarked that "the effect of this act is to place national and other banks, in respect to their right to sue in the federal courts, on the same footing. It follows that a national bank cannot in virtue of any corporate right sue in a federal court."¹

§ 242(a). **When foreign bank may be sued in state court.** In the case of the *Continental National Bank v. Folsom*,² the bank had attached the real estate of F, who lived in Georgia. To do this it was needful to give a bond with a surety. This was done. Afterward F sued the bank and the surety in the state court. The bank defended on the ground that it could not be thus sued. But the court said that the Act of 1882 "by its terms made the banking association subject to the jurisdiction of our courts, if a local banking institution of the state and city of New York, where it is located and doing business, would under similar circumstances have been subject to their jurisdiction."

§ 243. **Tax suit may be in federal court.** But, like other banks and citizens, a national bank may sue in a federal court whenever the subject-matter of litigation involves an element of federal jurisdiction, of which a federal court may, under the law, take judicial cognizance. Thus a suit by a national bank against a county treasurer to enjoin the collection of an excessive tax on its personal property, alleged to have been in violation of the act of Congress permitting the state to tax national banks, is a case arising under a law of Congress and can therefore be maintained in a federal court.³

§ 244. **Bill of revivor.** So, too, a bill of revivor may be brought in a federal court. In *Witters v. Foster*,⁴ an administrator, the "bill charged the intestate, in connection with others as directors of the bank, with neglect of duty in not requiring a

¹ *Union National Bank v. Miller*, 15 Fed. R., 703.

² 3 S. E. Rep., 267.

³ *Union National Bank v. Miller*, 15 Fed. R., 703; *Richards v. Incorporated Town of Grand Rapids*, 31 Id., 505.

⁴ 26 Fed. R., 737.

bond of the cashier, and in not holding meetings and appointing committees and receiving reports as required by the by-laws; in allowing persons to become indebted to an amount exceeding one-tenth of the capital; and in reckoning assets as good as a basis of dividends, when they were in fact worthless, contrary to the provisions of the statutes." Judge Wheeler said that "objection is made to reviving the suit upon the grounds that the court has not jurisdiction since the Act of June 3, 1882, and that the cause of action does not survive. The cause of action rests upon the requirements of the laws of the United States, and by-laws made pursuant to such laws, and therefore is one arising under those laws, jurisdiction over which is not taken away by that Act."

§ 245. **Suit by receiver.** A receiver, too, of a national bank can sue in a federal tribunal. H was appointed a receiver of an insolvent national bank in Vermont and obtained an order from the United States Circuit Court for that district to sell some bonds that were pledged to the bank as security for a debt due to the bank by the defendant railroad company in Canada. The company having brought a suit in a Canadian court to recover the bonds, the receiver filed a bill in the United States Circuit Court to enjoin the company against the further prosecution of its suit in Canada. It was decided that the Circuit Court had jurisdictions and that the injunction should be granted. Judge Wheeler said:¹ "The principal ground urged in opposition to the motion is the want of jurisdiction of this court over any suit between the orator [Hendee] and defendant to try the title to these bonds. No question is or could well be made but that this court had ample jurisdiction for that purpose prior to the Act of Congress of July 12, 1882. By that Act it was provided 'that the jurisdiction for suits hereafter brought by or against any association established under any law providing for national banking associations' should 'be the same as not other than the jurisdiction for suits by or against banks not organized under any law of the United States, which do or might do banking business where such national banking associations may be doing business when such suits may be begun.'²

"This court would have no jurisdiction of such a suit as this between a state bank, located where this bank was, and the defendant,

¹ *Hendee v. Connecticut & P. R. Co.*, 26 Fed. R., 677.

² Public Laws, 47 C. 1 S. Ch. 260, Sec. 4.

for they would be citizens of the same state, and there would be nothing in the subject-matter conferring jurisdiction; and it would have had no jurisdiction if this bank had continued business in its own right, and had brought this suit.

“It is argued that the receiver has no greater rights than the bank, and merely represents it, and that, therefore, the jurisdiction is the same as and not other than it would have been if the bank, while doing business, had brought the suit. This argument appears well enough founded to the extent that the receiver stands upon and represents merely the rights of the bank as to the matter in controversy.¹ But this does not determine the full meaning of the Act of 1882. The purpose of that Act appears to be to put national banks, as such, in the same situation as state banks, for the purposes of suing and being sued. No state bank, nor other bank not a national bank, could be in the situation in which this bank is. It is wholly in the hands of the orator, as a receiver, for the purpose of having its affairs wound up, and is not doing and cannot do any business, whatever anywhere. It was brought into this condition by proceedings under the laws of the United States. The orator was appointed to his position as receiver by an officer of the United States, and is himself an officer of the United States, and acts as such in bringing this suit.² A suit in behalf of a corporation created by act of Congress arises under the laws of the United-States, although the cause of action itself is founded on the common law or other statutes. The right of the orator to sue arises in the same manner. He cannot proceed at all without invoking the aid of the laws of the United States.

“The Act of 1882 appears to take away the right of the bank as such, but not to affect the right of the orator as receiver. He is a receiver to collect the assets, and pay over the money raised from them to the Treasurer of the United States, subject to the order of the Comptroller, for distribution among the creditors. In matters concerning the sale of property, concerning bad and doubtful debts, and in some aspects, concerning the appointment of a receiver in the first instance, the courts of the United States have some jurisdiction, in addition to that of the Comptroller.

¹ *Bank v. Kennedy*, 17 Wall., 19; *Bank of Bethel v. Pahquioque Bank*, 14 Wall., 383.

² *Stanton v. Wilkeson*, 8 Bened., 357; *Price v. Abbott*, 17 Fed. R., 506.

"The sale of property, and compounding bad and doubtful debts, is remitted the order of a court of record of competent jurisdiction. That part of sec. 57 of the Banking Act of 1864 giving jurisdiction to any state, county, or municipal court having jurisdiction in similar cases was not brought into the Revised Statutes, but was dropped out when the rest of the section giving jurisdiction to the courts of the United States within the district was brought into sections 563¹ and 629.²

"The state courts appear to be left with the jurisdiction arising out of the ability to sue and be sued, and without power over purely administrative proceedings, for the government of officers of the United States, under the laws of the United States. The receivership is an entire thing, provided for, controlled, and regulated by the laws of the United States through the Comptroller and the courts of the United States within the district. The defendant is a citizen of the United States within the district. The suit of the defendant, wholly without the jurisdiction of the receivership, to deprive the receiver of property within, would tend to defeat its object. Such suits are frequently restrained by injunction."³ Since this decision the Act of 1887 has clearly established the receiver's right to sue in the federal tribunals.⁴ In *Price v. Abbott*,⁵ it was decided that the Act of 1882 did not apply to a receiver.

§ 246. **Quo warranto proceeding.** Has not a federal court jurisdiction, also, in a quo warranto proceeding, which is prosecuted by an officer of the state in behalf of an individual against another to determine his right to an office, for example, a directorship. In 1868 before the Statute under consideration was passed, Judge Butler said, in a case of this kind: "This is one of that class of cases where jurisdiction in the state court is utterly incompatible with the necessary jurisdiction of the national government. The corporation in question being the creature and instrument of that government must necessarily be subject to that alone. By the common law, and by our statute, an information of this character lies as well to deprive a corporation of its charter as to determine the rights of its competing officers; and if the relator [or prosecuting officer] is right in this claim, its charter can be taken

¹ Sub-division 15, § 248.

² Sub-division 11, § 248.

³ *Hendee v. Connecticut & P. R.*, 26 Fed. R., 677.

⁴ Public Laws, 49 C. 2 S. Sec. 3.

⁵ 17 Fed. R., 506.

away and its franchises seized by the courts of the state. Nothing could be more repugnant in character than such an unauthorized interference, for such a purpose, or for any purpose."¹

"Nor do any sections of the Banking Law² confer jurisdiction, section 5178 authorizes suits against the corporation only. This is not a suit against the corporation, but a proceeding by one individual against another individual competing for the office of director of it; and it is not within the letter or spirit of the act."³

Acts of 1863
and 1864.

§ 247. Before the Statutes of 1882 and 1887 were enacted there were others that determined the jurisdiction of the federal and state courts in suits by or against national banking associations. The first Banking Law enacted "that suits, actions, and proceedings by and against any association under this Act, may be had in any circuit, district, or territorial court of the United States held within the district in which such association may be established."⁴ The next year the law was amended by adding to the foregoing "or in any state, county, or municipal court in the county or city in which said association is located, having jurisdiction in similar cases: *Provided, however,* That all proceedings to enjoin the Comptroller under this Act shall be had in a circuit, district, or territorial court of the United States, held in the district in which the association is located."⁵ In amending the Act of 1863, the following year, Congress omitted in the main portion to provide that suits by the national banking association might be brought in the national or state courts. This "omission was doubtless accidental," and was restored in the revision of 1875.⁶

Provisions
of Revised
Statutes.

§ 248. The Revised Statutes contained several provisions relating to the subject. "The district courts shall have jurisdiction as follows:

"Fifteenth. Of all suits by or against any association established under any law providing for national banking associations within the district for which the court is held."⁷

"The circuit courts shall have original jurisdiction as follows:

Tenth. Of all suits by or against any banking association established in the district for which the court is held, under any law providing for national banking associations.

¹ State v. Curtis, 35 Conn., 374 p. 381.

² Secs. 136, 563, 629, 5178.

³ State v. Curtis, 35 Conn., p. 384.

⁴ Act 1863, Sec. 59.

⁵ Act 1864, Sec. 57.

⁶ Kennedy v. Gibson, 8 Wall., 498.

⁷ Sec. 563.

Eleventh. Of all suits brought by or against any banking association established in the district for which the court is held, under the provisions of Title 'The National Banks' to enjoin the Comptroller of the Currency, or any receiver acting under his direction, as provided by said Title."¹

"The jurisdiction vested in the courts of the United States in the cases and proceedings hereinafter mentioned, shall be exclusive of the courts of the several states:

Second. Of all suits for penalties and forfeitures incurred under the laws of the United States."²

"Suits, actions, and proceedings against any association under this Title may be had in any circuit, district, or territorial court of the United States held within the district in which such association may be established, or in any state, county, or municipal court in the county or city in which said association is located, having jurisdiction in similar cases."³

"No attachment, injunction or execution, shall be issued against such association or its property before final judgment in any suit, action, or proceeding, in any state, county, or municipal court."⁴

"All proceedings by any national banking association to enjoin the Comptroller of the Currency, under the provisions of any law relating to national banking associations, shall be had in the district where such association is located."⁵

§ 249. **Bank's right to sue was by National Banking Act.** Having given the statutory legislation on the subject the construction of the various provisions will be briefly considered. It may be remarked that a national bank has never sued by any right conferred by the Judiciary Act, but by the National Banking Law⁶

Before the Statute of 1882 the federal courts had jurisdiction in all suits by and against national banking associations,⁷ and without regard to the citizenship of the parties.⁸ Moreover, the United

¹ Sec. 629.

² Sec. 711.

³ Sec. 5198, as corrected by Act Feb. 18, 1875. ⁴ Sec. 5242. ⁵ Sec. 736.

⁶ *Commercial National Bank v. Simmons*, 1 Flippin, 449; *Kennedy v. Gibson*, 8 Wall., 498.

⁷ *Foss v. First National Bank*, 3 Fed. R., 185; *White v. Commonwealth National Bank*, 4 Brewster, 234; *Orange National Bank v. Traver*, 7 Sawyer, 210; *First National Bank v. County of Douglas*, 3 Dill., 298.

⁸ *County of Wilson v. National Bank*, 103 U. S., 770 p. 776; *Kennedy v. Gibson*, 8 Wall., 498.

States Supreme Court could re-examine the judgment of a state court which involved the right of a national bank to purchase a note secured by real estate.¹ Even if having an adequate remedy in a state court a national bank could sue in a federal tribunal.²

§ 250. **Were suits limited to the federal courts.** But Judge McKennan went further and sought to maintain that the Banking Law of 1864 was "an unconditional grant of jurisdiction of all suits by or against national banks to the circuit courts of the district in which such banks are established, and is limited to these courts. Hence the more reasonable hypothesis is that it was intended to enable national banks to sue and be sued in the circuit courts of their several districts alone, irrespective of the conditions as to the amount in controversy and the citizenships of the parties. * * The terms of the statute embrace all suits, alike, and their fair import is that of all suits which a national bank may rightfully institute in its own name the circuit court of the district in which it is established may entertain jurisdiction."³

§ 251. **This construction wrong.** But this was not tenable ground. In *Claffin v. Houseman* ⁴ Judge Bradley said: "The United States is not a foreign sovereignty as regards the several states, but is a concurrent, and within its jurisdiction, paramount sovereignty. Every citizen of a state is a subject of two distinct sovereignties, having concurrent jurisdiction in the state, —concurrent as to place and persons, though distinct as to subject-matter. Legal or equitable rights, acquired under either system of laws may be enforced in any court of either sovereignty, competent to hear and determine such kind of rights and not restrained by its constitution in the exercise of such jurisdiction. Thus, a legal or equitable right acquired under state laws may be prosecuted in the state courts, and also, if the parties reside in different states in the federal courts. So, rights, whether legal or equitable, acquired under the laws of the United States, may be prosecuted in the United States courts, or in the state courts, competent to decide rights of the like character and class; subject, however, to this qualification, that where a right arises under a law of the United States Congress may, if it see fit, give to the federal courts exclusive jurisdiction."

¹ *Swope v. Leffingwell*, 105 U. S., 3.

² *First National Bank v. Bohne*, 8 Fed. R., 115.

³ *Mitchell v. Butler*, 8 Rep. 232. ⁴ 93 U. S., 130 p. 136.

§ 252. Opinions of New York and Illinois courts.

"The only cases," said Rapallo, J., "in which exclusive jurisdiction is conferred by the Banking Act upon the courts of the United States, so far as we can find, are proceedings to enforce the forfeiture of the franchises of banking associations for violations of the act, and proceedings to enjoin the Comptroller of the Currency from winding up the corporation, through a receiver."¹ And this view has prevailed everywhere.² Indeed, the New York Court of Appeals maintained that the power to bring actions against the national banks conferred by the National Banking Act was "permissive and not mandatory." Furthermore, "it was not competent for Congress to deprive the state courts of jurisdiction in all actions against these banking associations."³

"Our courts," said Walker, C. J., of Illinois, "under the powers conferred on them by our constitution have jurisdiction over all persons and things within the borders of the state. And when persons or corporations, without reference to when or where the latter are created, come into this state, they are within the jurisdiction of our courts. And it is by virtue of this power thus conferred that our courts exercise their jurisdiction, and not by virtue of congressional action or federal grant of power. If either of these corporations were to sue in our courts for any matters, except such as those in which the court would refuse to exercise its functions in favor of a natural person, our courts would take jurisdiction and proceed to trial and judgment. The law regards such bodies as persons, and extends to them the rights and privileges of natural persons, but no more or greater rights."⁴

§ 253. Bank is citizen of state and could be sued in state court. For the purpose of jurisdiction a national bank was declared to be a citizen of the state where it was located,⁵ and could be sued in a state court in a county or city outside its

¹ *Brinckerhoff v. Bostwick*, 88 N. Y., p. 61.

² *Adams & Co. v. Daunis*, 29 La. Ann., 315; *Bletz v. Columbia National Bank*, 87 Pa., 87; *Stephens v. Monongahela National Bank*, 7 Week. Notes, 491; *First National Bank v. Hubbard*, 49 Vt., 1.

³ *Church, C. J., Cooke v. State National Bank*, 52 N. Y., 96 p. 107.

⁴ *Missouri River Tel. Co. v. First National Bank*, 74 Ill., p. 221.

⁵ *St. Louis National Bank v. Allen*, 2 McCrary, 92; *Manufacturers' National Bank v. Baach*, 2 Abb. U. S., 232; *S. C. 8 Blatchf.* 137; *Cooke v. State National Bank*, 52 N. Y., 96; *Davis v. Cook*, 9 Nev., 134; *Chatham National Bank v. Merchants' National Bank*, 4 Th. & C., 196.

location. This was denied,¹ unless it submitted voluntarily to the jurisdiction of the court.² But the United States Supreme Court decided otherwise,³ the Chief Justice remarking that section 5136 subjected "the bank to suits at law or in equity as fully as natural persons, and we see nowhere is the Banking Act any evidence of an intention on the part of Congress to exempt banks from the ordinary rules of law affecting the locality of actions founded on local things." The proceeding in that case related to property in the parish of La Fourche which had been seized and sold under process from the district court of that parish. The proceeding "was clearly local in its nature" and was sustained.⁴ Likewise McCrary, J., has said that "a fair construction of this provision would seem to go no further than to place these corporations on an equal footing with natural persons, and to confer upon them the right to sue and be sued in the federal courts only to the same extent as natural persons, and under like circumstances and conditions."⁵

§ 254. **Remarks by Barnard, P. J.** In New York a national bank could be sued in any state court having general jurisdiction, in which an individual could be sued for the same cause. It was not necessary to bring the action in the county where the bank was located. "To restrict the operation of section 5136 [granting general power to sue and be sued] the word may, in section 5198 [relating to suits for usury] must be read must. While it is an admitted rule of construction to hold that the word may means must, when so intended, there are grave reasons why such a construction is not proper in this case. It would give a special privilege to a defendant national bank. It would curtail the general right to sue and be sued like a natural person in all courts. If a national bank cannot be sued except in the county where it is located, a national bank having a claim against another, and it may be a district national bank in the same state, must go to the place of location of the debtor bank to sue it; and this would be imperative, even if the business was done and all the witnesses lived at the place of the location of the creditor

¹ *Cadle v. Tracy*, 11 Blatchf., 101; *McCracken v. Covington City Nat. Bank*, 4 Fed. R., 602 p. 607; *Crocker v. Marine National Bank*, 101 Mass., 240.

² *Lee v. Citizens' National Bank*, 2 Cin., 298.

³ *Casey v. Adams*, 102 U. S., 66.

⁴ *Talmadge v. Third National Bank*, 27 Hun, 61.

⁵ *St. Louis National Bank v. Allen*, 2 McCrary, 92.

bank. There could be no change of the place of trial, because jurisdiction is given to try only in the place of location of the bank so sued. I do not think this was the design of this section. The intent seems to have been to give the power to sue the banks in the United States or the state courts. While the United States courts are specified, there is no limitation upon the state court, other than they should have jurisdiction in such cases."¹

§ 255. **When state court had no jurisdiction.** But a state court, that of Illinois for example, had no jurisdiction in a case by a foreign corporation against a national bank located in Iowa. Said Walker, C. J.: "By the plain meaning of the language of [section 57 in the Act of 1864] Congress intended only to confer jurisdiction upon the state courts of Iowa, the county court of Woodbury county, and the municipal court of Sioux City, if they had jurisdiction of similar cases under the laws of that state. The effort to confer jurisdiction was not on such courts generally, but simply upon the courts in the jurisdiction in which the delinquent bank might be located."²

§ 256. **Bank could sue in federal court within or outside its district.** A national bank could sue in a federal court though the defendant was located in the same district,³ or could sue, in the Circuit Court of the United States in another state, a citizen who lived there. For the purpose of sustaining the action, it was presumed that the individual members of a national bank were citizens of the state where the bank was located within the meaning of the constitution.⁴ And if the bill alleged for example, that the plaintiff was "a citizen of the state of Illinois, and located and residing and doing business in the city of Chicago, in said state," and that the defendant was a citizen of New York, this was sufficient to give the circuit court jurisdiction of the suit.⁵

§ 257. **Could not be sued outside its district.** But a national bank could not be sued in a federal court outside the dis-

¹ Barnard, P. J., *Talmadge v. Third National Bank*, 27 Hun, 61.

² *Missouri River Tel. Co. v. First National Bank*, 74 Ill., 217 p. 219.
Bank v. County of Douglas, 3 Dill., note p. 300.

³ *Commercial National Bank v. Simmons*, 1 Flippin, 449; *First National*

⁴ *Manufacturers' National Bank v. Baach*, 2 Abb. U. S., 232; *S. C. 8 Blatchf.*, 137; *Main v. Second National Bank*, 6 Biss., 26; *Orange National Bank v. Traver*, 7 Sawyer, 210.

⁵ *Manufacturers' National Bank v. Baach*, 2 Abb. U. S., 232.

trict where it was located. And the serving of a process on one of its officers, who happened to be in another district, did not confer jurisdiction. A corporation was declared to be not migratory, or not moving around with the person of its officers.¹ Nor did the Federal Practice Act of June 1, 1872, change the rule in this regard, or enlarge the jurisdiction of the federal courts.²

§ 258. Receiver's right to sue in federal court. The District Court of the United States has always had jurisdiction of suits by receivers to enforce the liability of shareholders.³ Moreover, they can sue "without reference to the locality of their personal citizenship."⁴

§ 259. Can other than usury cases be brought under section 5198. With regard to the right to proceed against national banks by section 5198, it was decided in Louisiana that this related only to actions to recover usurious interest and did not cut off the jurisdiction of state courts in other matters.⁵ Chief Justice Waite remarked in *Casey v. Adams*,⁶ that the statute related to transitory actions only, and not to those which were local in their character. Nor does the language imply that even all transitory actions are included within its operation. The Supreme Court of Georgia, however, speaking through its late Chief Justice, declared that from the language employed by the supreme federal tribunal the statute "does relate to all transitory actions."⁷ Whatever interpretation is to be put on the remark of the court in *Casey v. Adams*, "the evident object of this provision," says Andrews, J., "was to give the federal court jurisdiction without regard to the citizenship of the plaintiff." * * * The provision is permissive merely and not mandatory, and therefore not limiting the general rule which permits civil cases arising under the laws of the United States to be prosecuted and determined in the state courts unless exclusive jurisdiction of them has been vested in the federal courts, or unless Congress has prohibited the state courts from entertaining jurisdiction in such cases."⁸

¹ *Main v. Second National Bank*, 6 Biss., 26.

² *Id.*

³ *Stanton v. Wilkeson*, 8 Bened., 357.

⁴ *Kennedy v. Gibson*, 8 Wall., 498 p. 507.

⁵ *New Orleans National Banking Association v. Adams*, 3 Woods, 21.

⁶ 102 U. S., p. 66.

⁷ *Continental National Bank v. Folsom*, 3 S. E. Rep., 267 p. 272.

⁸ *Robinson v. National Bank*, 81 N. Y., 385 p. 391.

"There is no conflict between the two sections, but each may have full operation without interfering with the other, except so far as suits for the recovery of interest is concerned."¹

§ 260. **Cannot sue for less than \$500 in federal courts. Exception.** The federal courts have never had amplér jurisdiction over national banks than they have over citizens. Consequently as the amount in controversy has always been a needful element to the jurisdiction of the court in the case of natural persons, and must be five hundred dollars or more, as much must have been involved in a national bank suit to gain jurisdiction.² But this limit has never prevented a receiver from suing in a federal court.

§ 261. **Removal of cases from state court.** Concerning the right of removing national bank cases from the state to the federal courts the law clearly declared that this could not be done on the ground that the banks were created by national law.³ When a suit was brought, if both parties were citizens of the same state, one party could not, by becoming a citizen of another, have the suit removed to the United State Circuit Court under the Statute of 1867.⁴ Said the court on one occasion: "We are of opinion that this Statute applies only to cases where, at the time the suit is brought, one of the parties is a citizen of another state than that in which it is brought. Any other construction would enable either party to all suits in the state courts to defeat the jurisdiction of the court, at his own option, by removing into another state."⁵

§ 262. **Chatham National Bank v. Merchants' National Bank.**⁶ A national bank in West Virginia which was sued in a state court by a national bank in New York city served a notice of appearance on December 15th, but did not file a petition for the removal of the cause to the federal court until January 7th, the following month, the petition stating that the defendant then entered its appearance, but had not done so before. This was held a valid compliance with the federal statute requir-

¹ Hall, J., *Continental National Bank v. Folsom*, 3 S. E. Rep., p. 273.

² *St. Louis National Bank v. Brinkman*, 1 Fed. R., 45.

³ *Wilder v. Union National Bank*, 9 Biss., 178; *Pettilton v. Noble*, 7 Biss., 449.

⁴ Ch. 196.

⁵ *Tapley v. Martin*, 116 Mass., 275 p. 276.

⁶ 4 Th. & C., 196, S. C. 1 Hun, 702.

ing the defendant "at the time of entering his appearance in the state court to file his petition."

§ 263. **Remarks of Waite, C. J.**¹ "The removal of this class of cases from a state court to a circuit court [of the United States] was first provided for by the Act of March 3, 1875, in that clause of section two which relates to suits 'arising under the constitution or laws of the United States.' Thus the federal and state courts had concurrent jurisdiction for suits brought by or against national banks, and a suit of that character begun in a state court could be removed by either party to a circuit court of the United States if the value of the matter in dispute exceeded five hundred dollars, because, as a national bank is a federal corporation, a suit by or against it is necessarily a suit arising under the laws of the United States." By the Statute of 1882, however, the state courts have exclusive jurisdiction except suits between the national banks and "the United States, or its officers and agents." Consequently a bank can no longer have these suits removed from state into federal courts under the Act of 1875.

§ 264. **Removal in case of receiver.** A receiver began an action against another receiver in a state court by summons without any complaint setting forth the cause of action at a time early enough to make it triable at the April term of the court, if the pleading had been promptly filed. The time for filing the complaint was extended to the April term, when the plaintiff made a motion for an order to examine the officers of the bank to enable him to make a complaint and, in support of the motion, filed an affidavit stating that his cause of action arose from the fact that the bank of which he was a receiver had paid to the defendant bank illegal interest, and that by the statutes of the United States the defendant bank had become indebted to the other for twice the amount paid. If the examination had been instantly made, and a complaint had been framed at once, the cause would not have been triable in due course until the May term, and at that term it was removed to the United States court. It was held that the cause was removable and that the application for removal was made in time.²

§ 265. **Right to sue in state court a bank in voluntary liquidation.** The right of a state tribunal to proceed

¹ *Leather Manufacturers' Bank v. Cooper*, 120 U. S., 778; *National Bank v. Fore*, 25 Fed. R., 209. ² *Davies v. Marine National Bank*, 24 Fed. R., 194.

against a national bank in voluntary liquidation has been considered by the Supreme Court of Georgia. In a bill filed by the trustees of a Masonic institution against a national bank and B, its president, and N, its cashier, it was charged that beside its capital it had a large surplus at the time of taking this step, that it had assets enough to pay all its debts and return to its stockholders their stock and a premium. B owned a majority of the stock, and managed the bank as though it was wholly his own. B and N appropriated large sums of money to their own use, and paid the stockholders only par for their stock. In the bill it was further alleged that the complainant sought in vain to have a receiver appointed by the Comptroller of the Currency, that B and N would not pay a judgment which he had obtained against the bank, and prayed for appropriate relief. The court, through Hawkins, J., said that "if the allegations in the bill [were] true the creditors of the bank could compel B to account for the assets so far as to pay their debts, for all the assets and property of the bank in the hands of its stockholders or president, or elsewhere, are but a trust fund to pay the debts and liabilities of the corporation; and the bank having gone into voluntary liquidation, and ceased its connection with the government of the United States, was subject to like proceedings as domestic corporations or natural persons, and if its president had and held a fund liable to the payment of debts a court of equity, at the instance of a creditor, could reach and appropriate such assets in payment of a debt of the bank."¹

§ 266 Can be sued though having a receiver. A bank may be sued though in liquidation, and having a receiver.² Says Alvey, J.: "It is not reasonable to suppose that Congress intended that upon simply resolving to go into liquidation and providing for the redemption of its circulating notes the banking association should be dissolved. If by such acts it were dissolved all actions by or against it would at once abate; and parties might be left utterly without remedy for the enforcement of the plainest right, or recompense for the most grievous wrong."³

¹ Merchants & Planters' Nat. Bank v. Trustees, 65 Ga., 603 p. 608, first trial, 63 Id., 549.

² Bank of Bethel v. Pahquioque Bank, 14 Wall., 383; Security Bank v. National Bank, 4 Th. & C., 518; Ordway v. Central National Bank, 47 Md., 217.

³ Ordway v. Central National Bank, 47 Id., p. 239.

U. S. district
attorney to
conduct
suits.
Rev. Stat.
Sec. 880.

§ 267 "All suits and proceedings arising out of the provisions of law governing national banking associations, in which the United States or any of its officers or agents shall be parties, shall be conducted by the district attorneys of the several districts under the direction and supervision of the Solicitor of the Treasury." ¹

§ 268 **Meaning of the section.** In construing this statute Judge Swayne remarked in a suit by the receiver of an insolvent bank against the stockholders for contributions: "The receiver is the agent of the United States and * * this suit should have been conducted by their attorney. But this provision is merely directory. The question which arises is between the United States and its officers. The rights of the defendants are in no wise concerned, and they cannot be heard to make the objection that this duty of the local law officer of the government has been devolved upon another. It is to be presumed there were sufficient reasons to warrant this departure from the letter of the law." ² And in another case Woodruff, J., said: "The most obvious meaning, intent and effect of this section are, to impose upon the district attorneys the duty of conducting suits and proceedings which may be necessary to carry into full effect the provisions of the act, whether such suits are brought in the name of the United States or of the Comptroller of the Currency, or in the name of, or by, the receiver of a banking association, and in whatever court such suits may be prosecuted." ³

¹ Act 1864, Sec. 56.

² *Kennedy v. Gibson*, 8 Wall., 498 p. 504.

³ *Van Antwerp v. Hulburt*, 7 Blatchf., p. 434.

CHAPTER XIV.

PLEADING AND EVIDENCE.

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| <p>§ 269. Certified and sealed copies of Comptroller.</p> <p>270. Certified copies of organization.</p> <p>271. Who can question validity of organization.</p> <p>272. How bank's existence may be proved.</p> <p>273. What must be proved.</p> <p>274. How it must describe itself.</p> <p>275. Proof of existence in <i>Mix v. National Bank</i>.</p> | <p>§ 276. <i>Merchants' National Bank v. Glendon Company</i>.</p> <p>277. <i>Washington County National Bank v. Lee</i>.</p> <p>278. <i>Hungerford National Bank v. Van Nostrand</i>.</p> <p>279. <i>Thatcher v. West River National Bank</i>.</p> <p>280. Effect of doing business before date of certificate.</p> |
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§ 269. "Every certificate, assignment, and conveyance executed by the Comptroller of the Currency, in pursuance of law, and sealed with his seal of office, shall be received in evidence in all places and courts; and all copies of papers in his office, certified by him and authenticated by the said seal, shall in all cases be evidence equally with the originals. An impression of such seal directly on the paper shall be as valid as if made on wax or wafer."¹

§ 270. "Copies of the organization certificate of any national banking association, duly certified by the Comptroller of the Currency, and authenticated by his seal of office, shall be evidence in all courts and places within the jurisdiction of the United States of the existence of the association, and of every matter which could be proved by the production of the original certificate."²

§ 271. **Who can question validity of organization.** The organization of a national bank may be denied or questioned by a person who has not estopped himself.³ But if he has accepted, as payee, a promissory note, payable at the bank, and has sold the note to the institution, he cannot raise this question by averring a want of knowledge sufficient to form a belief of its corpo-

Documents certified and sealed by Comptroller may be evidence. Rev. Stat. Sec. 884.

Certified copies of organization certificate may be evidence. Rev. Stat. Sec. 885.

¹ Act 1864, Sec. 2.

² Id., Sec. 6.

³ *National Bank v. Orcutt*, 48 Barb., 256; *Huffaker v. National Bank*, 12 Bush., 287.

rate existence. "Whilst he is not estopped to make the defense, he has placed himself in an attitude which makes it his duty to ascertain from an examination of the public records of the treasury department of the general government, whether the association with which he has been voluntarily dealing has authority to do business as a national bank."¹

§ 272. **How bank's existence may be proved.** In proving a bank's existence a copy of the certificate of organization, certified by the Comptroller, with his certificate authorizing the bank to begin business, with other facts showing that it has acted as a corporation, is sufficient to prove that the bank is legally existing.²

§ 273. **What must be proved.** To maintain an action a compliance with the statutory requirement concerning publication need not be shown. Says Sedgwick, J. : "The section does not say that the corporation is not to commence business, or to be deemed to be organized, until such publication. On the contrary, the certificate must be that the association has complied with all the provisions of the act required to be complied with before being entitled to commence the business of banking under the act."³

§ 274. **How it must describe itself.** If a bank in suing should describe itself, for example, as "The Third National Bank of Baltimore," this would not be equivalent to an averment that the plaintiff was a banking association, established in the district of Maryland, nor that it was established by the law of the United States, providing for national banking associations.⁴ "There are other Baltimores than the one in Maryland, and there does not appear to be in the National Bank Act anything to prohibit an association formed in any other state, from having been the first to take the title of the plaintiff, if they had seen fit, and if the Comptroller of the Currency had approved."⁵

§ 275. **In Mix v. National Bank,**⁶ the objection was made under the issue on the plea of *nul tiel corporation* to receive-

¹ Lindsay, C. J., *Huffaker v. National Bank*, 12 Bush., 287 p. 292.

² *Merchants' Exchange Nat. Bank v. Cardozo*, 3 J. & Sp., 162; *First National Bank v. Kidd*, 20 Minn., 234; *Tapley v. Martin*, 116 Mass., 275.

³ *Merchants' Exchange Nat. Bank v. Cardozo*, 3 J. & Sp., 162 p. 169.

⁴ *Third National Bank v. Teal*, 5 Fed. R., 503.

⁵ *Id.*, p. 505.

⁶ 91 Ill., 20.

ing the Comptroller's certificate, provided by the above section. The court said, there was, besides, evidence that the bank had been acting as a national bank for eleven years; and the existence of the bank is acknowledged in the vote required by the defendant, it being made payable at the bank. We think the certificate was properly enough received in evidence, and that the evidence was amply sufficient to establish, least *prima facie*, the existence of the corporation.

§ 276. **Merchants' National Bank v. Glendon Co.**¹

In another case a national bank described itself in an action as the Merchants' National Bank of Bangor, "a corporate body organized under the laws of the United States of America, and having an established place of business at Bangor, in the state of Maine," and, to prove its corporate existence, introduced a certificate of the Comptroller that it had been duly organized, and the testimony of the book-keeper of a bank in Boston that the Merchants' National Bank of Bangor did a banking business under that name; that he had been in their banking house in Bangor; was well acquainted with the cashier, and that his own bank was in the habit of receiving remittances from that bank. This evidence was declared to be competent to show that the bank was a banking corporation in fact, and transacting the business appropriate to such an institution.

§ 277. **Washington County National Bank v. Lee.**²

In another case a national bank described itself as "The Washington County National Bank, a corporation duly established by law and doing business in Greenwich, in the state of New York," and to prove its corporate existence introduced an organization certificate of "The Washington County National Bank of Greenwich," to "be located * * in the town of Greenwich, county of Washington and state of New York," and a certificate of the Comptroller that "The Washington County National Bank of Greenwich, in the county of Washington, and state of New York," had been duly organized. It was held that in the absence of evidence of the existence at Greenwich of another bank named "The Washington County National Bank of Greenwich," the evidence would warrant the inference of the plaintiff's organization.

§ 278. **Hungerford National Bank v. Van Nostrand.**³ But a promissory note payable at the Hungerford Na-

¹ 120 Mass., 97.

² 112 Mass., 521.

³ 106 Mass., 559.

tional Bank, for example, "does not necessarily indicate a corporation established under that name;" this is especially so if the note be made payable to the bank as a party.¹

§ 279. **Thatcher v. West River National Bank.**² Documentary evidence of the existence of a corporation under the name of "The West River National Bank of Jamaica," which was described as located in the town of Jamaica, county of Windham, and state of Vermont, was admitted under the general issue to prove the corporate existence of the party plaintiff styled in the declaration, "The West River National Bank of Jamaica, Vermont."

§ 280. **Effect of doing business before date of certificate.** Nor was the objection valid that the certificate of organization introduced in the above case was acknowledged before a notary, who was one of the shareholders of the bank. This is a question for the Comptroller. "His certificate of compliance with the act of Congress removes any objection which might otherwise have been made to the evidence on which he acted."³ The Comptroller is "clothed with jurisdiction to decide as to the completeness of the organization, and his certificate is conclusive upon the subject for all the purposes of litigation. It has the same effect, and for the same reason, as his determination and order with respect to the amount to be collected from each stockholder in the event of the failure of the association. No question can be raised in this collateral way as to either."⁴ The fact that a bank may have been doing business before the date of the certificate of its organization does not prove that it is a different body from that named in the certificate.⁵

¹ *Hungerford National Bank v. Van Nostrand*, 106 Mass., 559.

² 19 Mich., 196.

³ *Id.*; *Casey v. Galli*, 94 U. S., 673.

⁴ *Swayne, J.*, *Casey v. Galli*, 94 U. S., 673 p. 679.

⁵ *Thatcher v. West River Nat. Bank*, 19 Mich., 196.

CHAPTER XV.

CRIMINAL OFFENSES.

Embezzling and False Entries.

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| <p>§ 281. Embezzlement.
 282. Meaning of "embezzle."
 283. Prosecution must be by indictment.
 284. What is a good indictment. Illustrations.
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 286. Intention.
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Circulating Notes.

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Sentences and State Prosecutions.

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| <p>§ 305. Mode of rendering sentence for several terms.
 306. State may punish for offenses not prescribed by Congress.</p> | <p>§ 307. Offenses mentioned.
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§ 281. Most of the violations of the National Bank Act are covered by the following section: "Every president, director, cashier, teller, clerk, or agent of any association, who embezzles, abstracts, or willfully misapplies any of the moneys, funds, or credits of the association; or who, without authority from the directors, issues or puts in circulation any of the notes of the association; or who, without such authority, issues or puts forth any certificate

Embezzle-
ment.
Rev. Stat.
Sec. 5209.

of deposit, draws any order or bill of exchange, makes any acceptance, assigns any note, bond, draft, bill of exchange, mortgage, judgment, or decree; or who makes any false entry in any book, report, or statement of the association, with intent, in either case, to injure or defraud the association or any other company, body politic or corporate, or any individual person, or to deceive any officer of the association, or any agent appointed to examine the affairs of any such association; and every person who with like intent aids or abets any officer, clerk, or agent in any violation of this section, shall be deemed guilty of a misdemeanor, and shall be imprisoned not less than five years nor more than ten."

§ 282. **Meaning of embezzle.** In construing the words "embezzles, abstracts or willfully misapplies," contained in the first clause of this section, Judge Benedict says that each of them "must be given effect. The word 'misapply' was intended to include acts not covered by the previous words 'embezzle' or 'abstract.' To give to the word 'misapply' the same meaning as the word 'embezzle' is to eliminate a word from the statute. This cannot be done. Nor can the provision that the acts prohibited shall be deemed a misdemeanor, be disregarded. By this provision the law in ordinary cases of misdemeanor is made applicable, and by that law the officer who causes or procures the money of the bank to be misapplied is a principal offender, and may be charged as such. Aiders and abettors who are not officers of the bank are covered by the last clause of the section."¹ Judge Lowell, also, has remarked that the word appears to mean, whenever used to distinguish a crime which a person has the opportunity to commit, by reason of some office or employment which may include, in its significations, some breach of confidence or trust, some misuse of an opportunity of that sort. That is about all, I think, that can be found of a general nature in the meaning of the word."² If, therefore, the president of a bank, who is charged as a trustee in administering its funds, converts them to his own use, he embezzles and abstracts them, unless he can show adequate authority for so doing.³

§ 283. **Prosecution must be by indictment.** The charge

¹ United States v. Fish, 24 Fed. R., 585 p. 591.

² United States v. Conant, 9 Cent. Law Jour., 129.

³ In the matter of Van Campen, 2 Bened., 419.

of misapplying the funds of a national bank by the cashier is the charge of an "infamous crime" which, under the federal constitution, must be made by the indictment of a grand jury; it cannot be prosecuted by a mere information filed by the district attorney with the consent of the court.¹

§ 284. **What is a good indictment. Illustrations.** If an indictment for abstracting the funds of a bank should charge that the accused was president and agent of a national bank, duly organized and established, and then existing and doing business under the laws of the state, and that, as such president and agent, he did then and there "willfully and unlawfully and with intent to injure the said national banking association, and without the knowledge and consent thereof, abstract and convert to his own use certain moneys and funds of the property of the said association of the amount and value, etc., this would sufficiently describe and identify the crime created by this section."²

An indictment for willfully misapplying the funds of a national bank need not charge that the moneys and funds alleged to have been misapplied had been previously intrusted to the accused; since a willful and criminal misapplication of the funds of the association may be made by its officer or agent without having previously received them into his manual possession.³ But an indictment which should charge the president of a national bank with willfully misapplying the funds of the association, should aver that he did so for the benefit of himself and with the intent to injure and defraud the association, or some other person or body corporate.⁴ If a count should charge the fraudulent purchase by the president of a national bank of its shares, and should allege that they were held by him "in trust for the use of said association, and that said shares were not purchased as aforesaid in order to prevent loss upon any debts theretofore contracted with said association in good faith," the offense would not be described with sufficient certainty.⁵ Neither would a count be sufficient which should charge the president of a national bank with the fraudulent purchase of its shares, but should omit to state for

¹ Welker, J., *United States v. Hade*, 10 Chic. Leg. News, 22.

² *United States v. Northway*, 120 U. S., 327.

³ *Id.*

⁴ *United States v. Britton*, 107 U. S., 655.

⁵ *Id.*

whose use the purchase was made, or to state that it was not made in order to prevent loss on a previously contracted debt.¹

An indictment which should charge that the accused "as president and agent" of a national bank did the acts forbidden by this section would not be vitiated by such a description of his official character because he could be "both president and agent."² An indictment which should charge a national bank officer with misapplying \$25,000 of the bank "by causing the said sum of \$25,000 to be credited to G and W on books of the bank," etc., and the evidence should be a credit by a single entry of \$105,000, of which \$25,000 was misapplied, would not be a material variance.³ An indictment which should charge that the accused "was then and there president and agent of a certain national banking association, to wit: [naming the association] theretofore duly organized and established, and then existing and doing business at [naming the place] under the laws of the United States," would sufficiently state that the bank was organized under the National Banking Law, or to carry on the business of banking under a law of the United States.⁴

§ 285. **Essentials in indictment for aiding and abetting.** In charging the president of a bank with aiding and abetting its cashier in misapplying its funds, it is not necessary to aver in the indictment that he then and there knew that the person so aided and abetted was the cashier.⁵ But in charging a person who is not connected with a bank with aiding and abetting a director in misapplying its funds, the indictment must state facts showing such a misapplication of the money of the association by the director.⁶

§ 286. **Intention.** It was the intention of Congress to make criminal the misapplication and conversion of the funds of national banking associations, without regard to the consideration, whether or not the person thus misapplying them received any of the funds or other advantage directly or indirectly.⁷ If it appears that the funds of a banking association have been ab-

¹ United States v. Britton, 107 U. S., 655.

² United States v. Northway, 120 U. S., 327.

³ United States v. Fish, 24 Fed. R., 585.

⁴ United States v. Northway, 120 U. S., 327.

⁵ Id.

⁶ United States v. Warner, 26 Fed. R., 616.

⁷ Charge of Coxe, J., to jury, United States v. Lee, 12 Fed. R., 816.

stracted or willfully applied by an accused person, he is precluded from denying that it was done with an unlawful intention.¹ But the intent to defraud the bank is an essential element of the crime in every case. And the words "with intent in either case to injure or defraud," etc., apply as well to embezzlement, etc., of the funds, as to the making of false entries in the books.²

§ 287. **In the case of the United States v. Taintor**³ it was shown that he took moneys and funds of a bank, of which he was cashier, and used them in stock speculations, which were conducted in his own name, by depositing them with a stock broker as margin. The defendant offered to prove that these acts were known to the president and some of the directors of the bank, and were sanctioned by them, and were intended for the account and benefit of the bank, and were believed by him to have been sanctioned by the president and some of the directors, although there was no resolution of the board of directors authorizing or sanctioning them. The evidence was only offered to disprove the averments in the indictment that the acts were done "with intent to injure and defraud the bank." The evidence was properly excluded.

§287 (a). **Jurisdiction.** If the cashier of a national bank in Ohio should send a draft on its correspondent bank in New York city, directing it to pay the bank's money to a third party who should be engaged in conducting speculations for the cashier, the offense would be committed in New York, and therefore beyond the jurisdiction of the federal court in Ohio. Says Judge Sage: "While it is true that an officer commits an offense against the law by making and sending forward a draft upon funds of the bank in New York or elsewhere, it is not true that he thereby misapplies or embezzles the funds, or can be convicted of so doing. The misapplication, embezzlement, or abstraction is in New York, but the drawing of the draft without the authority of the board of directors is in Ohio."⁴

§ 288. **Is a loan a criminal application?** What act would be a criminal misapplication of the money of a national bank? Would a loan? Says Benedict, J.: "It is a mistake to

¹ United States v. Lee, 12 Fed. R., 816.

² United States v. Voorhees, 9 Fed. R., 143.

³ 11 Blatchf., 374.

⁴ United States v. Northway, 33 Int. Rev. Record, 384.

suppose that there cannot be a criminal misapplication of the moneys of a national bank by means of a loan." Said Judge Benedict in Fish's case, in which this point was raised: "If the transactions in question were loans, the question still would be whether they were such loans as amounted to a misapplication. Under the by-laws of the bank the president had a large discretionary power to make loans. But his authority in this respect was not unlimited. He had no right to make loans which he knew or believed would not be approved by the board of directors if the circumstances were known; much less had he any right to continue a series of transactions as loans wholly peculiar, exceptional, and dangerous in character, without communicating to the board of directors what knowledge he had respecting these transactions, and when he knew that such knowledge by the board of directors would have prevented a repetition of the loans. Such conduct on his part would be a clear abuse of the discretionary power, not the lawful exercise of it contemplated by the by-laws. A known abuse of discretionary power in making a series of loans which it is known the directors would not sanction, will constitute a criminal misapplication, if found to have been done in bad faith, for private gain, and not in the exercise of honest judgment. * * So far as the question of guilt or innocence under this statute is concerned, there is no distinction between a loan in bad faith for the purpose of defrauding the bank, and an application of money, with like intent, in a form other than that of a loan. A loan of the moneys of a bank by the president of the bank in bad faith, for the purpose of defrauding the bank, is no loan in the sense of the law. It is simply a fraud." ¹

§ 289. **When over-draft is misapplication.** "A conversion, by a director, of money of the bank of which he has acquired the possession or control by means of his overdraft, drawn without right and with intent to defraud, would constitute a misapplication of money of the association within the meaning of the statute. Such act would, moreover, involve a violation of duty on the part of the director." ² And if the president of a national bank, with the intention to defraud the institution, should permit a firm of which he was a member to overdraw their account, he

¹ United States v. Fish, 24 Fed. R., pp. 590, 589.

² Benedict, J., United States v. Warner, 26 Fed. R., 616.

would be guilty of misapplying its funds.¹ Nor would the government be required to show that the officers personally took money from the bank, or was personally present when any other person took away money to render him criminally liable.²

§ 290. Liability for exercise of official discretion.

"The honest exercise of official discretion in good faith, without fraud, for the advantage, or supposed advantage, of the association is not punishable; but if official action be taken, not in the honest exercise of discretion, in bad faith, for personal advantage, and with fraudulent intent, it is punishable."³

§ 291. Purchase of stock in trust, discount of worthless notes, withdrawal of deposit by debtor.

The statute would not be violated if the president and director of a national bank should cause its shares to be purchased with its money and held in trust for its benefit.⁴ Nor would the statute be violated if the president should procure the discount of a note, not well secured,—whose maker and indorser are known to be insolvent at the time of discounting the same,—and should apply the proceeds to his own use.⁵ Nor would the statute be violated if the president should permit a depositor, who is largely indebted to the bank, to withdraw his deposits instead of applying them on his indebtedness.⁶

§ 292 False entries of loans.

An indictment against the president of a national banking association for making a false entry on its books requires, says Judge Woods, the following averments: "1. That the accused was the president or other officer of a national banking association, which was carrying on a banking business. 2. That being such president or other officer, he made in a book, report, or statement of the association, describing it, a false entry, describing it. 3. That such false entry was made with intent to injure or defraud the association, or to deceive any agent, describing him, appointed to examine the affairs of the association. 4. Averments of time and place."⁷

If a national bank officer should make false credits in favor of a firm of which he was a member, and should permit the money represented by these to be paid to his firm on the check of

¹ Benedict, J., *United States v. Fish*, 24 Fed. R., 585.

² Id.

³ *United States v. Fish*, 24 Id., 585 p. 588.

⁴ *United States v. Britton*, 108 U. S., 192.

⁵ Id.

⁶ Id.

⁷ Id., 107 U. S., p. 662.

his partner, in pursuance of an understanding with him that the money should be thus drawn, he would be guilty of violating the statute.¹

It is not necessary to show that the particular form of statement employed by the clerk in making the entry was directed by the accused. "It is sufficient if he gave directions which he knew would result, and which did result in an entry asserting that the bank had certain bonds as collateral security for certain loans when the fact was otherwise."²

§ 293. **False entries in reports to Comptroller.** Concerning false entries by the president of a national bank in his reports to the Comptroller of the Currency, Judge Blodgett³ has remarked that "officers of national banks who assume to make reports called for under the law, must be held responsible for the statements made in these reports, unless, of course, it is made clearly to appear that these statements are the result of a mistake. The defendant cannot be heard to say that he did not know what was in reports made and sworn to by him in the due course of his duty under the law. It is his duty to know whether the report is true or not, and more especially when the report in respect to any item in the class of assets or liabilities differs from the books of the bank. So that ignorance of the contents of the report, or of the actual condition of the bank as to the amount of money or other available assets on hand, is no excuse for a false statement made in these reports, because it is from these statements, with the investigations of the bank examiner, that the public and the Comptroller determine as to the credit of the bank. Therefore, a bank officer called upon to make reports under the law, cannot avoid the responsibility, either civil or criminal, for statements in the report by showing that they were made by a clerk, and that if false he did not know it. The clerk must be presumed to have written the report under the direction of the officers who are required to verify and attest it, except as to actual mistakes shown."

"The false entries named must have been made with intent to injure or defraud the bank or its stockholders, or any company or

¹ United States v. Fish, 24 Fed. R., 585.

² Benedict, J., United States v. Fish, 24 Fed. R., p. 594.

³ United States v. Allen, 10 Biss., 90 p. 94.

individual person, so that an intent to injure the bank, its stockholders, or some other person is the offense under the law."¹

§ 294. The laws prescribing penalties for counterfeiting national bank notes, engraving false plates, and other offenses touching these notes will next be considered. "The words 'obligation or other security of the United States' shall be held to mean all bonds, certificates of indebtedness, national [bank]² currency, coupons, United States notes, treasury notes, fractional notes, certificates of deposit, bills, checks, or drafts for money, drawn by or upon authorized officers of the United States, stamps and other representatives of value, of whatever denomination, which have been or may [be]³ issued under any act of Congress."

Securities of the U. S. defined. Rev. Stat. Sec. 5413.

§ 295. "Every person who falsely makes, forges, or counterfeits, or causes or procures to be made, forged, or counterfeited, or willingly aids or assists in falsely making, forging, or counterfeiting, any note in imitation of, or purporting to be in imitation of, the circulating notes issued by any banking association now or hereafter authorized and acting under the laws of the United States; or who passes, utters, or publishes, or attempts to pass, utter, or publish, any false, forged, or counterfeited note, purporting to be issued by any such association doing a banking business, knowing the same to be falsely made, forged, or counterfeited, or who falsely alters, or causes or procures to be falsely altered, or willingly aids or assists in falsely altering any such circulating notes, or passes, utters, or publishes, or attempts to pass, utter, or publish as true, any falsely altered or spurious circulating note issued, or purporting to have been issued, by any such banking association, knowing the same to be falsely altered or spurious, shall be imprisoned at hard labor not less than five years nor more than fifteen years, and fined not more than one thousand dollars."

Counterfeiting national bank notes. Rev. Stat. Sec. 5415.

§ 296. "Every person having control, custody, or possession of any plate, or any part thereof, from which has been printed, or which may be prepared by direction of the Secretary of the Treasury for the purpose of printing, any obligation or other security of the United States, who uses such plate, or knowingly suffers the same to be used for the purpose of printing any such or similar obligation, or other security, or any part thereof, except as may be

Using plates to print notes without authority, or for having bank note paper. Rev. Stat. Sec. 5430.

¹ Blodgett, J., *United States v. Allen*, 10 Biss., 90 p. 91.

² An amendment by Act Feb. 18, 1875.

³ An obvious omission.

printed for the use of the United States by order of the proper officer thereof; and every person who engraves, or causes or procures to be engraved, or assists in engraving, any plate in the likeness of any plate designed for the printing of such obligation or other security, or who sells any such plate, or who brings into the United States from any foreign place any such plate, except under the direction of the Secretary of the Treasury or other proper officer, or with any other intent, in either case, than that such plate be used for the printing of the obligations or other securities of the United States; or who has in his control, custody, or possession any metallic plate engraved after the similitude of any plate from which any such obligation or other security has been printed, with intent to use such plate, or suffer the same to be used in forging or counterfeiting any such obligation or other security, or any part thereof; or who has in his possession or custody, except under authority from the Secretary of the Treasury or other proper officer, any obligation or other security, engraved and printed after the similitude of any obligation or other security issued under the authority of the United States, with intent to sell or otherwise use the same; and every person who prints, photographs, or in any other manner makes or executes, or causes to be printed, photographed, made, or executed, or aids in printing, photographing, making, or executing any engraving, photograph, print, or impression in the likeness of any such obligation or other security, or any part thereof, or who sells any such engraving, photograph, print, or impression, except to the United States, or who brings into the United States from any foreign place any such engraving, photograph, print, or impression, except by direction of some proper officer of the United States, or who has or retains in his control or possession, after a distinctive paper has been adopted by the Secretary of the Treasury for the obligations and other securities of the United States, any similar paper adapted to the making of any such obligation or other security, except under the authority of the Secretary of the Treasury or some other proper officer of the United States, shall be punished by a fine of not more than five thousand dollars, or by imprisonment at hard labor not more than fifteen years, or by both."

Passing, selling, etc., counterfeit notes.
Rev. Stat.
Sec. 5431.

§ 297. "Every person who, with intent to defraud, passes, utters, publishes, or sells, or attempts to pass, utter, publish, or sell, or brings into the the United States with intent to pass, pub-

lish, utter, or sell, or keeps in possession or conceals with like intent any falsely made, forged, counterfeited, or altered obligation, or other security of the United States, shall be punished by a fine of not more than five thousand dollars, and by imprisonment at hard labor not more than fifteen years."

§ 298. "Every person who, without authority from the United States, takes, procures, or makes, upon lead, foil, wax, plaster, paper, or any other substance or material, an impression, stamp, or imprint of, from, or by the use of any bed-plate, bed-piece, die, roll, plate, seal, type, or other tool, implement, instrument, or thing used or fitted or intended to be used, in printing, stamping, or impressing, or in making other tools, implements, instruments, or things, to be used, or fitted or intended to be used, in printing, stamping, or impressing any kind or description of obligation or other security of the United States, now authorized or hereafter to be authorized by the United States, or circulating note or evidence of debt of any banking association under the laws thereof, shall be punished by imprisonment at hard labor not more than ten years, or by a fine of not more than five thousand dollars, or both."

Taking im-
pressions of
tools.
Rev. Stat.
Sec. 5432.

§ 299. "Every person who, with intent to defraud, has in his possession, keeping, custody, or control, without authority from the United States, any imprint, stamp, or impression, taken or made upon any substance or material whatsoever, of any tool, implement, instrument, or thing, used, or fitted or intended to be used, for any of the purposes mentioned in the preceding section; or who, with intent to defraud, sells, gives, or delivers any such imprint, stamp, or impression to any other person, shall be punished by imprisonment at hard labor not more than ten years, or by a fine of not more than five thousand dollars."

Having pos-
session of
impression
of tools.
Rev. Stat.
Sec. 5433.

§ 300. "Every person who buys, sells, exchanges, transfers, receives, or delivers, any false, forged, counterfeited, or altered obligation or other security of the United States, or circulating note of any banking association organized or acting under the laws thereof, which has been or may hereafter be issued by virtue of any act of Congress, with the intent that the same be passed, published, or used as true and genuine, shall be imprisoned at hard labor not more than ten years, or fined not more than five thousand dollars, or both."

Buying, sell-
ing or deal-
ing in forged
or altered
notes.
Rev. Stat.
Sec. 5434.

Unlawfully
circulating
notes of
closed bank.
Rev. Stat.
Sec. 5487.

§ 301. "In all cases where the charter of any corporation which has been or may be created by act of Congress has expired or may hereafter expire, if any director, officer, or agent of the corporation, or any trustee thereof, or any agent of such trustee, or any person having in his possession or under his control the property of the corporation for the purpose of paying or redeeming its notes and obligations, knowingly issues, re-issues, or utters as money, or in any other way knowingly puts in circulation any bill, note, check, draft, or other security purporting to have been made by any such corporation whose charter has expired, or by any officer thereof, or purporting to have been made under authority derived therefrom, or if any person knowingly aids in any such act, he shall be punished by a fine of not more than ten thousand dollars, or by imprisonment not less than one year nor more than five years, or by both such fine and imprisonment. But nothing herein shall be construed to make it unlawful for any person, not being such director, officer, or agent of the corporation, or any trustee thereof, or any agent of such trustee, or any person having in his possession or under his control the property of the corporation for the purpose hereinbefore set forth, who has received or may hereafter receive such bill, note, check, draft, or other security, bona fide and in the ordinary transactions of business, to utter as money or otherwise circulate the same."

§ 302. **United States currency includes national bank notes.** In construing these statutes national bank notes are included by the phrase "United States currency." Larceny of them, therefore, is larceny of United States currency.¹

§ 303. **Evidence.** If the counterfeit notes set out in an indictment should not exhibit an imprint of the seal of the treasury, while the notes put in evidence should exhibit it, this variance would not render their admission improper.² Nor would notes circulating as those of a national banking association be a variance from notes in an indictment which should call them "national bank currency notes."³

§ 304. **Indictment.** With respect to the indictment itself this would not be bad if omitting to give a *fac simile* of the seal to which it referred, or the numbers on the notes described.⁴

¹ State v. Gasting, 23 La. Ann., 609.

² United States v. Bennett, 17 Blatchf., 357.

³ Id.

⁴ Id.

§ 305. **Mode of rendering sentence for several terms.** Concerning the sentence that may be rendered for a violation of any of these sections, whenever it is for several terms for different offenses, it must state when each term for each offense is to begin and end. In New Jersey a person pleaded guilty to three indictments, one for misapplying the funds of a national bank when cashier, one for false entries to conceal the misapplication, and a third for making a false statement with the intent to deceive the examining officers. The court pronounced the following sentence on him: "That the prisoner be confined at hard labor in the state's prison of the state of New Jersey for the term of five years upon each of the three indictments above named, said terms not to run concurrently, and from and after the expiration of said terms until the costs of this prosecution shall have been paid." It was decided that the words "said terms not to run concurrently" were uncertain and incapable of application and therefore void, and that the sentences began at once and ran concurrently. Said Judge Bradley: "If the prisoner is to be detained in prison for three successive terms, neither he, nor the keeper of the prison, nor any other person, knows, or can possibly know, under which indictment he has passed his first term, or under which he will have to pass the second or the third. * * A prisoner is entitled to know under what sentence he is imprisoned. The vague words in question furnish no means of knowing. They must be regarded as without effect, and as insufficient to alter the legal rule that each sentence is to commence at once, unless otherwise specially ordered."¹

§ 306. **State may punish for offenses not prescribed by Congress.**—A state may prescribe any law for the protection of the property of national banks and for punishing their officers which is not contrary to congressional legislation. Says Judge Butler,² speaking for the Supreme Court of Connecticut: "The business of the bank is conducted within the jurisdiction of this state, with our citizens, and in conformity to our laws, and it is competent for the legislature to pass any law affecting that business, or protect the bank or its customers in the conduct of that business by any penalty, and such law and penalty will not be predicated on any law or offense created by Congress, or have any relation or

¹ United States v. Patterson, 29 Fed., R. 775 p. 777.

² State v. Tuller, 34 Conn., 280 p. 297.

be repugnant to the currency act, or in any manner infringe the jurisdiction of Congress or the federal courts. It is theft by our law to steal from a national bank; it is burglary to break into one for the purpose of stealing; and it is cheating to obtain money from one by false pretenses. As a corporate being, located in the state, its property and interests and business are protected by state laws and subject to state legislation, and so it is competent for the legislature to protect its customers, the citizens of the state, in their business dealings with it, whatever they may be." A state, therefore, may punish a national bank officer for embezzling the property of its customers, because Congress has prescribed no punishment for such an offense.

§ 307. **Offenses mentioned.** So, too, a state criminal law relating to national bank officers which in part is repugnant to a law of Congress may be enforced so far as there is no repugnancy. Thus a state statute which provides that a punishment for any bank officer who shall take and purloin any of the moneys, choses in action, etc., "belonging to or deposited in" a national bank may be enforced against an officer who steals a special deposit of government bonds, for example, because Congress has provided no penalty for the offense.¹

The important question then is under this branch of the subject whether the federal government has prescribed any penalty for the offense of which a person may be charged by state officers. In Massachusetts the Supreme Court has decided that the fraudulent conversion by an officer or person employed by a national bank, and located there, of the property of individuals deposited in such bank is not punishable under any national law, and the local courts have jurisdiction of the offense under the statutes of that state.² Said Foster, J.: "The further objection is made that the courts of the United States are vested by the Judiciary Act of September 24, 1789, with exclusive cognizance of all crimes cognizable under the authority of the United States, except where it is otherwise provided by the acts of Congress. But an examination of the statutes of the United States leads us to the conclusion that the offense charged in this indictment has not been made punishable by any act of Congress. The enactments cited on behalf of the defendant punish the embezzlement of the property

¹ *State v. Tuller*, 34 Conn., 280.

² *Commonwealth v. Tenny*, 97 Mass., 50 p. 56.

of national banks, but not of the property of individuals, deposited with and in the custody of such banks.

"As the federal courts have no criminal jurisdiction except that conferred by Congress, no question can be made as to the constitutionality of state legislation punishing such frauds, until they have been made punishable by the federal laws. There is no view of the relative, or of the concurrent powers of the two governments, which affects the decision of the present case; for all courts and jurists agree that state sovereignty remains unabridged for the punishment of all crimes committed within the limits of a state, except so far as they have been brought within the sphere of federal jurisdiction by the penal laws of the United States."¹

Nor is a state prevented from trying a national bank officer for larceny, or the stealing of money. "The statute of the United States does not purport to punish larceny as such. The obvious inference is that Congress did not intend to interfere with the jurisdiction of state laws and state courts over offenses of that class against the property of national banks."²

So, too, a teller of a national bank may be tried by a state court for fraudulently making false entries on the bank books with the intention of defrauding the bank. The offense is a crime at common law; therefore, the state courts can take cognizance of it.³

§ 308. Cannot punish for passing counterfeit notes, nor accessory to embezzlement. But a state court has no jurisdiction over the offense of passing counterfeited national bank notes with knowledge of their counterfeit character. And if a state court should convict one of such an offense, he could be discharged on a motion in *habeas corpus* proceedings.⁴ Nor has a state court jurisdiction to try the cashier of a national bank for embezzling its funds;⁵ nor an accessory to an embezzlement by a national bank officer, even though he could not be indicted therefor in a federal court.⁶

¹ *Commonwealth v. Tenny*, 97 Mass., 50 p. 56.

² *Commonwealth v. Barry*, 116 Mass., 1 p. 5.

³ *Luberg v. Commonwealth*, 37 Leg. Int., 339.

⁴ *Ex parte Houghton*, 8 Fed. R., 897.

⁵ *Commonwealth v. Ketner*, 37 Leg. Int., 339, S. C. 8 Week. Notes, 133.

⁶ *Commonwealth v. Felton*, 101 Mass., 204.

CHAPTER XVI.

PREFERENCES, DISSOLUTION AND RECEIVERSHIP.

Preferences.

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| <p>§ 309. Preferences of insolvent banks void.</p> <p>310. Last clause of section is in force.</p> <p>311. What is prohibited.</p> <p>312. When does bank contemplate insolvency.</p> <p>313. Meaning of "act of insolvency."</p> <p>314. What is a preference.</p> <p>315. Presumption of intent.</p> <p>316. Payment of some, but not all, creditors would be a preference.</p> | <p>§ 317. Transfer of property to avoid failure is a preference.</p> <p>318. Transfer of deposit after bank's failure.</p> <p>319. Can bank's property be attached before final judgment.</p> <p>320. Of insolvent bank cannot be.</p> <p>321. How receiver can get dissolution.</p> <p>322. When can pledgee of insolvent bank hold his property.</p> |
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Involuntary Dissolution and Receivership.

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| <p>§ 323. Failing to pay its notes bonds of bank are forfeited.</p> <p>324. And Comptroller may appoint receiver.</p> <p>325. Intent of statute.</p> <p>326. Receiver is agent of U. S.</p> <p>327. When appointed by court.</p> <p>328. His powers.</p> <p>329. Persons contract with receiver at their peril.</p> <p>330. Bank not thereby dissolved.</p> <p>331. Rights of bank become fixed after his appointment.</p> <p>332. When judgment against bank after appointment may be opened.</p> <p>333. Can hold only bank property.</p> <p>334. Receiver only can sue.</p> <p>335. Comptroller's certificate is evidence of right to sue.</p> <p>336. Can sue in and remove cases to federal court.</p> <p>337. Can make no motion in other cases.</p> <p>338. When can sue without Comptroller's order.</p> <p>339. May sell on order of court.</p> <p>340. Agreement without order.</p> <p>341. Nature or sale ordered by court.</p> <p>342. Order to compromise debt.</p> <p>343. Comptroller no authority to do this.</p> <p>344. No bond for suits required.</p> | <p>§ 345. Comptroller's notice to creditors.</p> <p>346. How their claims may be proved.</p> <p>347. Suing creditor has no special lien.</p> <p>348. Set off.</p> <p>348(a). Debt from bank cannot be set off against assessment.</p> <p>348(b). Government may retain money to pay debt.</p> <p>349. What claims to be included.</p> <p>350. Allowance of expense in establishing claim.</p> <p>351. Case <i>v. Bank</i>.</p> <p>352. Claim must be against bank and not officer.</p> <p>353. Interest.</p> <p>354. On what claims.</p> <p>355. Suit for its recovery, how brought.</p> <p>356. Interest during receivership.</p> <p>357. Dividends.</p> <p>358. How paid.</p> <p>359. Priority of government.</p> <p>360. Suit against receiver for misconduct as director.</p> <p>361. Cannot be attached in suit against shareholders.</p> <p>362. Expenses of receiver.</p> <p>363. Appointment of agent to receive assets from receiver and close bank's affairs.</p> |
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§ 309. "All transfers of the notes, bonds, bills of exchange, or other evidences of debt owing to any national banking association, or of deposits to its credit; all assignments of mortgages, sureties on real estate, or of judgments or decrees in its favor; all deposits of money, bullion, or other valuable thing for its use, or for the use of any of its shareholders or creditors; and all payments of money to either, made after the commission of an act of insolvency, or in contemplation thereof, made with a view to prevent the application of its assets in the manner prescribed by this chapter, or with a view to the preference of one creditor to another, except in payment of its circulating notes, shall be utterly null and void; and no attachment, injunction or execution, shall be issued against such association or its property before final judgment in any suit, action, or proceeding, in any state, county, or municipal court."¹

Preferences
of insolvent
bank void.
Rev. Stat.
Sec. 5242.

This section formed the fifty-second section of the Act of 1864, except the last clause, providing that no attachment shall be issued against a bank in a state court before final judgment. That clause was an amendment to the fifty-seventh section of the Act of 1864, and was passed in 1873.²

§ 310. **Last clause still in force.** The last clause is not repealed by the section in the Act of 1882, relating to suits brought by or against national banking associations. "In the first place," says Judge Rapallo, "the section referred to applies by its express terms only to suits thereafter brought against national banks. Secondly, it provides merely that the jurisdiction for such suits shall be the same as for suits against state banks."³

¹ Act 1864, Sec. 52. ² 17 Stat. at Large, 42 C. 3 S. Ch. 269, Sec. 2.

³ Raynor v. Pacific National Bank, 93 N. Y., 371.

§ 311. **What is prohibited.** This provision of the law, it may be remarked, is general, and applies to all national banking associations.¹ "It specifically prohibits," says Judge Finch,² "all transfers of the corporate property made with a view to preferences, and so protects the creditors from any voluntary act of the bank which selects out favored individuals for payment. But the bank may be passive, and such individuals gain a preference by a suit against the corporation, preceded or accompanied by an attachment or injunction, or, after judgment, enforced by an execution. These three things, therefore, were specifically prohibited by name; each being process well known and accurately defined in the law; and without any general words to carry the prohibition beyond them."

§ 312. **When a bank contemplates insolvency.** "A bank is in contemplation of insolvency when the fact becomes reasonably apparent to its officers that the concern will presently be unable to meet its obligations, and will be obliged to suspend its ordinary operations."³

§ 313. **Meaning of "act of insolvency."** The phrase, "act of insolvency," in this section, "is clearly an act which would be an act of insolvency on the part of an individual banker; that is, the closing of the doors, refusal to pay depositors on demand, refusal to go on in the due course of business to transact its business as a bank, and discharge its liabilities to its creditors."⁴

§ 314. **What is a preference.** What constitutes a preference? B, who was the executor and general manager of an estate, and also the cashier of a national bank, purchased four bills of exchange which had been accepted by the drawees, and were payable to the drawers, and indorsed by them. To pay for the bills, B, as executor, drew money enough from a deposit to the credit of the estate in his bank. He placed the bills in a box containing the papers of the estate, and applied the money to the drawer's indebtedness to the bank. The bank failed, and the receiver claimed the proceeds of the bills. It was held that B, in purchasing the drafts, acted as the agent of the drawers and as

¹ McCracken v. Covington City Nat. Bank, 4 Fed. R., 602 p. 606.

² Corn Exchange Bank v. Blye, 101 N. Y., 303 p. 305, affg 37 Hun, 473.

³ Wallace, J., Roberts v. Hill, 24 Fed. R., p. 573.

⁴ Blodgett, J., Irons v. Manufacturers' National Bank, 6 Biss., p. 306.

executor, and not as cashier, and though the bills were paid with funds which the estate had on deposit in the bank, and though B knew at the time that the bank was insolvent, yet as the purchase was *bona fide*, and not to secure a preference for the estate over other depositors, the transaction was not a violation of the section.¹

§ 315. **Presumption of intent.** "An intent to give a preference is presumed when a payment is made to a creditor by a debtor who knows his own insolvency, and therefore knows that he cannot pay all his creditors in full. A preference is the natural and probable consequence under such conditions."²

§ 316. **Payment of some, but not all, creditors would be a preference.** If the officers of a bank should pay some creditors to the exclusion of others, such payments would be preferences, and would justify "the intervention of a court of equity." Says Judge Blodgett: "It was the plain intention of the banking law that all creditors should share equally, and that no preference should be allowed in favor of one creditor as against others; that the United States government, as the guarantor of the circulating notes of the bank, is the only party that is entitled to any preference whatever; that all other creditors are to share alike. And, therefore, it would seem to follow that, if a bank is not in a condition to pay all its creditors, it can only pay them *pro rata*—that it has no right to pay a part in full and have others unpaid."³ So, too, if the directors should vote to close their bank and liquidate its indebtedness, any transfer of its assets to a creditor, for example, the payment of a certificate of deposit, thus securing to him a preference, would be regarded fraudulent, and would be void.⁴

§ 317. **Transfer of property to avoid failure is a preference.** When property is transferred by a bank to a

¹ Tuttle v. Frelinghuysen, 38 N. J., Eq., 12. It was contended in Venango National Bank v. Taylor, 56 Pa., 14, that this section was "intended for no more than to avoid all acts of the bank itself, all voluntary transfers by it of its notes, bonds, deposits, etc., with a view to giving preferences." But Strong, J., answered that "its language is general, as applicable to legal as to voluntary transfers."

² Wallace, J., Roberts v. Hill, 24 Fed. R., p. 574.

³ Irons v. Manufacturers' National Bank, 6 Biss., 301 p. 306.

⁴ National Security Bank v. Price, 22 Fed. R., 697.

creditor to avoid paying his debt, and thus postpone the failure of the bank, the transfer is none the less fraudulent and void.¹

§ 318. **Transfer of deposit after bank's failure.** A depositor cannot transfer his deposit to a debtor of the bank after its failure, for this would create a preference. Thus, T owed a national bank \$35,000, and R had a deposit there of \$44,000. The bank having failed, the next day R assigned his deposit to T. It was decided that T could not set off the deposit against his indebtedness, as the act would give a preference to a creditor after the bank's insolvency.²

§ 319. **Can banker's property be attached before final judgment.** Whether an attachment before final judgment of the property of a national bank is prohibited by the last clause of the section under consideration is an unsettled question. In New York the prohibition is regarded as applying only to an insolvent corporation.³ Says Judge Danforth in *Robinson v. National Bank*:⁴ "We concur with the general term in the opinion that these words of prohibition must be deemed to have the same relation as the other things prohibited, and apply only to insolvent corporations, or one about to become so; and that the object of the entire section is to prevent one creditor of a corporation, whose assets are insufficient to meet its liability, from obtaining a preference, whether it is sought through a voluntary assignment or transfer, or payment, or the form of a legal proceeding." But in Massachusetts and elsewhere an attachment cannot be issued against a national bank before final judgment in any proceeding in a state, county, or municipal court.⁵

¹ Wallace, J., *Roberts v. Hill*, 24 Fed. R., 571.

² *Venango National Bank v. Taylor*, 56 Pa., 14.

³ *National Shoe & Leather Bank v. Mechanics' National Bank*, 89 N. Y., 467; *National Bank v. Colby*, 21 Wall., 609. In New York it was decided, in 1867, that a national bank was a foreign corporation, and liable to attachment within the meaning of the code of that state. The court remarked that a national bank was not a foreign corporation in popular language, but was in the sense in which words were used relating to the attachment of "corporations formed under the laws of any other state, government or country," *Bower v. First National Bank*, 34 How. Pr., 408.

⁴ 81 N. Y., 385 p. 393.

⁵ *Crocker v. Marine National Bank*, 101 Mass., 240; *Chesapeake Bank v. First National Bank*, 40 Md., 269; *Cadle v. Tracy*, 11 Blatchf., 101; *Central National Bank v. Richland National Bank*, 52 How. Pr., 136; see *Farmers & Mechanics' Nat. Bank v. Dearing*, 91 U. S., 29.

In New York, not only may the property of a solvent bank located in the state be attached before final judgment, but also the property which may be there belonging to a bank located in another state. In *Robinson v. National Bank of New Berne*¹ the property attached belonged to a national bank of North Carolina. Judge Danforth declared that the proceeding was against the property, and not against the bank, and was lawful. The attachment was not to bring the bank into court, but to confirm Robinson's right to the property that had been attached.²

§ 320. **Of insolvent bank cannot be.** But if a bank is insolvent when the attachment is made it is invalid, and remains so, notwithstanding an increase of the bank's capital.³ Nor would the paying by a bank of a large amount of its debts after the issuing of an attachment prevent any one from questioning its validity.⁴

§ 321. **How receiver can get dissolution.** If a bank is insolvent at the time of making an attachment, and is afterward put under the control of a receiver, he can hold the property.⁵ In *Harvey v. Allen*⁶ an attachment from a state court was levied on the deposits of a bank which had failed to redeem its circulating notes, which had been protested; but the receiver's right to them was established. The receiver cannot make a motion in court to dissolve an attachment⁷ unless having authority from a state to do so.⁸

§ 322. **When can pledgee hold his property.** If the officers of a bank pledge its assets to prevent it from failing, can the pledgee hold them in the event of the bank's failure? In *Roberts v. Hill*,⁹ the officers of a bank pledged a note to

¹ 81 N. Y., 385.

² See *Rhoner v. First National Bank*, 14 Hun, 126, overruling *Southwick v. First National Bank*, 7 Hun, 96; *People's Bank of New York v. Mechanics' National Bank of Newark*, 62 How. Pr., 422.

³ *Raynor v. Pacific National Bank*, 93 N. Y., 371.

⁴ *Id.*, *Market National Bank v. Pacific National Bank*, 93 N. Y., 648, affg 30-Hun, 50, first trial 89 N. Y. 397, affg 27 Hun, 465.

⁵ *National Bank v. Colby*, 21 Wall., 609. ⁶ 16 Blatchf., 29.

⁷ *Tracy v. First National Bank*, 37 N. Y., 523; *Harvey v. Allen*, 16 Blatchf., 29.

⁸ *Bowen v. First National Bank*, 34 How. Pr. 408; *National Shoe & Leather Bank v. Mechanics' National Bank*, 89 N. Y., 440; *Allen v. Scandinavian National Bank*, 46 How. Pr., 71; *In re Griswold*, 13 Barb., 412; *People's Bank v. Mechanics' National Bank*, 62 How. Pr., 422.

⁹ 23 Fed. R., 311.

a depositor who had been allowing the institution to use his money, and who feared that he should lose it. Afterward, the bank did fail, and the receiver sought to set aside the pledge. The bank continued to do business about six weeks after the pledge was made. "Then," said Judge Wheeler, "the officers saw that the effort to maintain it was hopeless, and stopped business. Their apprehension of the condition of the bank, and motive to prevent suitable distribution of the assets, ought to be made to appear clearly, in order to justify going back so far as to the time of this pledge, and opening all pledges and payments on past debts; and their purposes and acts are to be considered in view of what they could see looking forward, and not wholly by what is apparent now, looking backward. If they saw at the time of the pledge that the bank was approaching failure, and made the pledge to keep the note out of the assets to be distributed, the pledge would be clearly void; but if they made it to prevent failure, and expecting to prevent failure, it would appear to be good." As the evidence showed that "they were using their assets to prevent failure," the pledge was sustained. At a subsequent trial the court changed their opinion, and the pledgee was obliged to surrender his security.¹

Failing to
pay its notes
bonds of
bank are for-
feited.
Rev. Stat.
Sec. 5227.

§ 323. Section 5226 of the Revised Statutes provides that whenever the notes of a national bank are not paid in the manner described therein, they may be protested unless their payment has been restrained by the order of a court of competent jurisdiction. The next section provides that "on receiving notice that any national banking association has failed to redeem any of its circulating notes, as specified in the preceding section, the Comptroller of the Currency, with the concurrence of the Secretary of the Treasury, may appoint a special agent, of whose appointment immediate notice shall be given to such association, who shall immediately proceed to ascertain whether it has refused to pay its circulating notes in the lawful money of the United States, when demanded, and shall report to the Comptroller the fact so ascertained. If, from such protest, and the report so made, the Comptroller is satisfied that such association has refused to pay its circulating notes and is in default, he shall, within thirty days after he has received notice of such failure, declare

¹ 24 Feb. R., 571.

the bonds deposited by such association forfeited to the United States, and they shall thereupon be so forfeited.”¹

§ 324. “On becoming satisfied, as specified in sections fifty-two hundred and twenty-six and fifty-two hundred and twenty-seven, that any association has refused to pay its circulating notes as therein mentioned, and is in default, the Comptroller of the Currency may forthwith appoint a receiver, and require of him such bond and security as he deems proper. Such receiver, under the direction of the Comptroller, shall take possession of the books, records, and assets of every description of such association, collect all debts, dues, and claims belonging to it, and, upon the order of a court of record of competent jurisdiction, may sell or compound all bad or doubtful debts, and, on a like order, may sell all the real and personal property of such association, on such terms as the court shall direct; and may, if necessary to pay the debts of such association, enforce the individual liability of the stockholders. Such receiver, shall pay over all money so made to the Treasurer of the United States, subject to the order of the Comptroller, and also make report to the Comptroller of all his acts and proceedings.”²

And Comptroller may appoint receiver. Rev. Stat. Sec. 5234.

§ 325. **Intent of Statute.** “The intent of this and other sections of the Revised Statutes bearing upon insolvent national banks is to throw the entire control into the hands of the Comptroller of the Currency, to centralize the power and responsibility for the purpose of facilitating the winding up of the affairs of the association and the payment of its obligations.”³

§ 326. **Receiver is agent of United States.** “The receiver of a national bank * * is the agent of the United States, and is limited as to his functions by the object of the receivership and the duties which it involves.”⁴ He is more especially, says Swayne, J., “the instrument of the Comptroller. He is appointed by the Comptroller, and the power of appoint-

¹ Act 1864, Sec. 47.

² Act 1864, Sec. 50. When the National Bankrupt Act was in force, the question was raised whether a person could proceed on its authority against a national bank. As the National Banking Act prescribed the mode of proceeding against an insolvent institution, it was held that nothing could be done under any other, *In re Manufacturers' National Bank*, 5 Biss., 499.

³ Davis, J., *Jackson v. United States*, 20 Ct. of Claims, p. 305.

⁴ Horton, J., C. J., *Ellis v. Little*, 27 Kansas, p. 719; *Kennedy v. Gibson*, 8 Wall., 498.

ment carries with it the power of removal.”¹ And, “where the Comptroller appoints a receiver, the concurrence or approval or approbation of the Secretary of the Treasury is to be presumed till the contrary appears, for the Comptroller is required to perform his duties under the general direction of the Secretary of the Treasury.”²

§ 327. **When appointed by court.** Sometimes a receiver may be appointed by the court on the application of a creditor for reasons that would not justify the Comptroller in appointing one. Says Judge Blodgett: “It would seem from an examination of the Banking Law that the Comptroller of the Currency has no authority to appoint a receiver except in certain contingencies, such as the failure to make good a reserve, the failure to redeem circulating notes on demand, the failure to make good the capital stock, whenever the same becomes impaired, and the failure to meet certain other requirements of the Banking Law.

* * There are many cases * * where the bank may not have so violated any of the provisions of the Banking Law as to call for the appointment of a receiver by the Comptroller.” In such cases, when a bank is delinquent, a court of equity may “take hold of whatever assets a bank may have, aside from the personal liability of the stockholders, and administer them as it would the affairs of any insolvent corporation.”³ And the proper remedy is by a proceeding in equity to marshal and distribute the assets.⁴

§ 328. **His powers.** The receiver is vested with all the assets of the bank which are to be converted into money and distributed among the creditors. The object sought to be accomplished is their distribution fairly and without preferences.⁵ As he “represents the bank, its stockholders, its creditors, and does not in any sense represent the government,” the courts cannot subject him to their jurisdiction.⁶

¹ Kennedy v. Gibson, 8 Wall., 498 p. 505; Casey v. Galli, 94 U. S., 673.

² Blatchford, J., Stanton v. Wilkeson, 8 Bened., 357 p. 361; see Cadle v. Baker, 20 Wall., 650; Price v. Abbott, 17 Fed. R., 506.

³ Irons v. Manufacturers' National Bank, 6 Biss., 301 p. 303; Wright v. Merchants' National Bank, 1 Flippin, 568.

⁴ Id.

⁵ Corn Exchange Bank v. Blye, 101 N. Y., 303; Robinson v. National Bank, 81 N. Y., 385; Rosenblatt v. Johnston, 104 U. S., 462.

⁶ Case v. Terrell, 11 Wall., 199.

§ 329. **Persons contract with receiver at their peril.** "As the power of a receiver of a national bank appointed by the Comptroller is limited, a person dealing with him in his official capacity is bound as a matter of law to have knowledge of his authority to act, and if contracts and agreements are entered into with the receiver in excess of his authority as conferred by law, the parties contract at their own peril, and the estate of the bank cannot be charged for the default or inability of a receiver acting outside of his functions as receiver and beyond the duties which it involves."¹

§ 330. **Bank not thereby dissolved.** "The act of appointing a receiver does not work a complete dissolution of the association." "Beyond doubt," remarks Judge Clifford, "the appointment of a receiver supersedes the power of the directors to exercise the incidental powers necessary to carry on the business of banking, as the receiver is required to take possession of the books, records and assets of every description of the association, and from that moment the association is forbidden to pay out any of its notes, discount any notes or bills, or otherwise prosecute the business of banking, but the corporate franchise of the association is not dissolved, and the association, as a legal entity, continues to exist, as is shown to a demonstration by the fact that it is required safely to keep the money on hand belonging to it, and may deliver special deposits in its keeping to the rightful owners."

* * The association may sue and be sued, complain and defend, in all cases where it may be necessary that the corporate name of the association shall be used for that purpose in closing its business and winding up its affairs under the provisions of the act which authorized its formation."² None of the proceedings relating to the appointment of a receiver and the proving of claims and the paying of dividends support the theory that a banking association ceases to exist when the receiver is appointed, "nor at any time before the assets of the association are fully administered and the balance, if any, is paid to the owners of the stock or their legal representatives."³ Moreover, in an action to establish

¹ Horton, C. J., *Ellis v. Little*, 27 Kansas, p. 720.

² *Bank of Bethel v. Pahquioque Bank*, 14 Wall., 383 p. 400.

³ *Id.*, p. 398; *Green v. Walkill National Bank*, 7 Hun, 63; *National Bank v. Insurance Company*, 104 U. S., 54; *Security Bank v. National Bank*, 2 Hun, 287.

the claim of a creditor which has been rejected either by the Comptroller or receiver, the bank and the receiver may both be made parties defendant.¹

§ 331. Rights of bank become fixed after appointment. After passing into the hands of a receiver, the rights and liabilities of the bank become fixed. "All the property and assets of the association," says Cornell, J., "then become a fund legally dedicated, first, to the satisfaction of any claim of the United States government for any deficiency in the proceeds of the bonds pledged for the redemption of its notes to meet the amount necessary to be expended for that purpose; and, second, for a ratable distribution of the balance among its general creditors, upon the principle of equality. No subsequent lien could be created, or right or preference obtained, in respect to any of the assets or property of the bank which did not exist at that time."²

§ 332 When judgment against bank after appointment may be opened. A judgment against a bank after its insolvency may sometimes be opened on the application of the receiver. Thus, the president of such a bank, of which a receiver had been appointed, was served with a summons in an action against it. Instead of informing the receiver or any director, he permitted judgment to be entered against the bank by default. The receiver, within a month after the entering of the judgment, and less than that time after receiving notice of it, obtained an order to show cause why the judgment should not be opened. The application, having been supported by evidence showing that the debt for which the judgment had been obtained did not exist, was regarded with favor, and the judgment was opened.³

§ 333 Can hold only bank property. A receiver can acquire no title to property in the custody of a bank which it does not own, or which has been acquired by another through attachment proceedings, or in other ways. Says Finch, J.: "The receiver, by his appointment, acquires no right to property in the custody of the bank which the latter does not own, as against the real owner; and the [preference]⁴ section was plainly not intended

¹ *Green v. Walkill National Bank*, 7 Hun, 63.

² *Balch v. Wilson*, 25 Minn., 299 p. 302; *National Bank v. Colby*, 21 Wall., 609.

³ *Security Bank v. National Bank*, 4 Th. & C., 518, S. C. 2 Hun, 287.

⁴ Sec. 5242.

to protect the receiver's custody as against such owner. It aims to protect the property of the bank in his hands, and not to give him arbitrary control of what the bank does not own." His rights are no greater if he dispute the title and claims to be the owner. "He might make such claim in any case. No law makes him the inevitable stakeholder pending the litigation. He may become so by giving the needed security, and we can see no just reason why he should be exempted from that obligation which falls upon others."¹ Accordingly, a process may be issued against the receiver in favor of the true owner for the restoration of his property to him.²

So, too, if an insolvent bank should have a special deposit in its possession, the receiver should return it to the owner.³ If it consist of bonds, for example, they must be demanded before an action can be maintained to recover them, but if they have been wrongfully transferred by the bank, or its cashier, and put with its funds, and reported and treated as a part of its assets, this is a conversion, and consequently no demand and refusal are necessary to maintain an action to recover them.⁴

§ 334 **Receiver only can sue.** "The receiver and he alone is authorized to sue, either in his own name or in the name of the bank for his use, to collect the assets of the bank and to enforce the individual liability of the stockholders. No such authority is given to the Comptroller. No money can be made by any collection of assets, or by any enforcement of the individual liability of stockholders, unless it is made by the receiver, and the statute contemplates that he shall make it and does not contemplate that any one else shall make it. * * The money which the receiver is to pay over, so far as it is made by collections by suit and enforcement by suit of the individual liability of stockholders, can come into the receiver's hands only through suits brought by himself in his own name, or in the name of the association for his use. He is, therefore, authorized to sue in his own name. His right to sue to collect debts due to the bank, and his right to sue to enforce the individual liability of stock-

¹ *Corn Exchange Bank v. Blye*, 101 N. Y., 303 p. 306, affg 37 Hun, 473.

² *Id.*

³ *First National Bank v. Dunbar*, 118 Ill., 625, affg 19 Brad., 558.

⁴ *Id.*

holders, rest upon the same provisions of law, and both of those rights have been sustained by abundant judicial authority.”¹

§ 335. Comptroller's certificate is evidence of right to sue. The Comptroller's certificate, approved by the Secretary of the Treasury, reciting all the facts of which the Comptroller must be satisfied to justify him in appointing a receiver, is sufficient evidence of the validity of the appointment to sustain any action that he may bring in his official capacity.² Nor can debtors, when sued by him, “inquire into the legality of his appointment. It is sufficient for the purposes of such a suit that he has been appointed and is receiver in fact. As to debtors, the action of the Comptroller in making the appointment is conclusive until set aside on the application of the bank. The bank may move in that behalf, but the debtor cannot. Section fifty makes express provision for a contest by the bank.”³

§ 336. Can sue in and remove cases to federal court. Have receivers the privilege in all cases of suing in the United States courts and of removing cases thereto which may be brought against them in the state tribunals? Says Bradley, J.: “I am not aware of any such prerogative which a receiver of a national bank has over other persons.”⁴ But the opposite view has recently been maintained, and with great force.⁵

§ 337. Can make no motion in other cases. A receiver can make no motion in a state court which has cognizance of a proceeding, an attachment, for example, to dissolve it, because he has no status there, as he is not a party to the suit.⁶ So, if a receiver should be appointed after the entering of a judgment for costs against a national bank, the court that rendered it could not order him to pay the costs because he was not a party to the record, nor an officer of the court, and, furthermore, he is bound to pay all moneys collected into the United States treasury.⁷ But he may become a party, and then his motion would be heard.

¹ Blatchford, J., *Stanton v. Wilkeson*, 8 Bened., 355 p. 358; citing *Kennedy v. Gibson*, 8 Wall., 498; *Bank v. Pahquioque Bank*, 14 Id., 383; *Bank v. Kennedy*, 17 Id., 19; *Case v. Berwin*, 22 La. Ann., 321.

² *Platt v. Beebe*, 57 N. Y., 339.

³ *Waite, C. J., Cadle v. Baker*, 20 Wall., 650 p. 651; *revsg Cadle v. Tracy*, 11 Blatchf., 101.

⁴ *Bird's executors v. Cockrem*, 2 Woods, 32.

⁵ §§ 239—245, 263, 264. ⁶ *Harvey v. Allen*, 16 Blatchf., 29.

⁷ *Ocean National Bank v. Carll*, 7 Hun, 237.

The other way for him is to bring a proceeding for the recovery of the property attached.¹

§ 338. When can sue without Comptroller's order.

In an ordinary case of a debt or claim due to a bank, the receiver may sue therefor without an order from the Comptroller. Says Judge Bradley: "The language of the statute authorizing the appointment of a receiver to act under the direction of the Comptroller means no more than that the receiver shall be subject to the direction of the Comptroller. It does not mean that he shall do no act without special instructions. This very appointment makes it his duty to collect the assets and debts of the association. With regard to ordinary assets and debts no special direction is needed; no unusual exercise of judgment is required. They are to be collected of course; that is what the receiver is appointed to do."²

§ 339. May sell on order of court. A receiver "may sell the real and personal property of the bank on such terms as the court shall direct, but he cannot sell in the absence of such an order, nor sell upon terms in conflict with the order."³ Consequently an order authorizing a receiver to sell all personal property and real estate mentioned and described in his petition "on such terms and in such manner as in his judgment may be for the best interests of the creditors and all interested in said bank and its assets," will not justify him in buying a judgment or in exchanging, trading or bartering the property of the bank for other property. Nor can a receiver charge the estate of the bank by an executory contract unless duly authorized by the National Banking Law and the order of a court of competent jurisdiction based thereon.⁴

§ 340. Agreement without order. And if a receiver should make an agreement without authority to do so "the estate cannot be charged for damages resulting from the failure or inability of the receiver to convey or deliver property not belonging to the bank, nor for his refusal to comply with covenants which he was without power as the receiver to make."⁵

¹ *Harvey v. Allen*, 16 Blatchf., 29; *Tracy v. First National Bank*, 37 N. Y., 523.

² *Bank v. Kennedy*, 17 Wall., 19 p. 22.

³ *Horton, C. J., Ellis v. Little*, 27 Kansas, p. 719.

⁴ *Id.*, 707.

⁵ *Id.*, p. 720.

§ 341. **Nature of sale ordered by court.** A receiver's sale made by order of the court is a judicial sale.¹ When one sale has not been confirmed for inadequacy of consideration, and a second sale is well attended and the property brings a fair price, it will not be set aside though afterward a somewhat higher offer for the property may be made; nor is "this the proper way to make judicial sales, nor will it tend to make parties come forward with an assurance that if they bid in good faith for property offered at a judicial sale they will be protected in their rights; nor will it cause property to bring what it is actually worth."²

§ 342. **Order to compromise debt.** A district court of the United States is "a court of record of competent jurisdiction" to order the receiver to compromise a doubtful debt.³ But it has no right to compound the liability of a shareholder on the application of the receiver.⁴

§ 343. **Comptroller no authority to do this.** The Comptroller has no authority to settle and compound suits brought by the receiver without leave of the court in which they are pending. In *Case v. Small*⁵ the judge, in considering the authority of the Comptroller over them, says: "Perhaps he might direct the receiver to discontinue, but to compound and settle claims requires the authority of the court. To discontinue, the direction should be positive." But if a receiver and counsel for the United States should compromise a suit it could not be opened years afterward, especially if no fraud was alleged.⁶

§ 344. **No bond for suits required.** No bond for the prosecution of the suit, or to answer in damages or costs, is required on writs of error or appeals issuing from or brought to the United States Supreme Court by direction of the Comptroller in suits by or against insolvent banks, or their receivers.⁷

§ 345. "The Comptroller shall, upon appointing a receiver, cause notice to be given, by advertisement in such newspapers as he may direct, for three consecutive months, calling on all persons who may have claims against such association to present the same, and to make legal proof thereof."⁸

Notice to
creditors by
Comptrol-
ler.
Rev. Stat.
Sec. 5235.

¹ *In re Third National Bank*, 9 Biss., 535.

² Blodgett, J., *In re Third National Bank*, 9 Biss. 535 p. 537.

³ In the matter of the petition of Platt, 1 Bened., 534.

⁴ *Price v. Yates*, 7 Week. Notes, 51. ⁵ 4 Woods, 78, S. C., 10 Fed. R., 722.

⁶ *Henderson, Receiver of Venango National Bank v. Myers*, 11 Phila., 616.

⁷ *Pacific Bank v. Mixter*, 114 U. S., 463.

⁸ Act 1864, Sec. 50.

§ 346. **How their claims may be proved.** "The claims of creditors may be proved before the Comptroller, or established by suit against the association. Creditors must seek their remedy through the Comptroller in the mode prescribed by the statute; they cannot proceed directly in their own names against the stockholders or debtors of the bank. The receiver is the statutory assignee of the association, and is the proper party to institute all suits; they may be brought, both at law and in equity, in his name, or in the name of the association for his use. He represents both the creditors and the association, and when he sues in his own name it is not necessary to make either a party to the suit."¹ The word "debts" in section 5234 includes the "contracts, debts and engagements" mentioned in section 5151, and the word "liabilities" imports no broader obligation.²

§ 347. **Suing creditor has no special lien.** If a creditor resorts to a suit and recovers judgment this will not give him "any lien on the property of the delinquent association, nor secure to the judgment creditor any preference over other creditors whose claims are proven before the receiver. All alike must await the action of the Comptroller of the Currency, and be content with a just and legal distribution of the proceeds of the assets collected by the receiver and liquidated by the Comptroller."³

§ 348. **Set-off.** In a suit against a depositor or other person, he may set off the amount of his deposit or other claim against the debt of the bank.⁴ Says Boynton, J. : "A right of set off, perfect and available against the bank at the time of his appointment as receiver, is not affected by the bank's insolvency. He succeeds only to the rights of the bank existing at the time it goes into liquidation."⁵ But a joint note of W and K, belonging to a bank which is overdue at the time of its failure, cannot be set off in their favor against notes not due when that event happened which were held by K against the bank and other insolvent makers jointly. Had W and K paid their note when it matured, the proceeds would have gone to the receiver for distribution. "Their failure to pay it when due ought not to place

¹ Swayne, J., *Kennedy v. Gibson*, 8 Wall., 498 p. 506.

² *Stanton v. Wilkeson*, 8 Bened., 357.

³ *Bank of Bethel v. Pahquioque Bank*, 14 Wall., 383 p. 402, affg 36 Conn., 325.

⁴ *Platt v. Bentley*, 11 Am. L. Reg. N. S., 171.

⁵ *Hade v. McVay*, 31 Ohio. 231 p. 238.

them in any better position than they would have occupied had they faithfully discharged their own obligation at maturity, according to its terms. It would be a strange principle in equity which would enable a party to derive an advantage from his own delinquency which he could not otherwise have enjoyed.”¹

§ 348(a). **Debt from bank cannot be set off against assessment.** In *Witters v. Sowles*,² the executor of B, who was the owner of four hundred and fifty shares in a national bank, delivered to it, while its failure was impending, securities belonging to the estate, of a larger aggregate value than the shares. These securities were used in paying and securing claims against the bank. It was in a failing condition at the time of receiving this assistance, and it was rendered, so the executor claimed, in fulfillment of an agreement between himself and the directors and bank examiner that in the event of the bank's survival the securities should be restored, and if it failed they should be applied on the assessment against the shareholders if one should be made. An assessment having been made the question was, could these securities, or their value, be applied in that way? Said Judge Wheeler:³ “This assessment is for the purpose of paying those who were creditors of the bank at the time of its failure. That property went to pay others not creditors at the time of the failure, so far as it did pay them. The delivery of the property may have created a liability of the bank; if so, the assessment upon this and the rest of the stock would go ratably upon that and the other liabilities if proved and established. A set off cannot be made without depriving others of their ratable proportion. Besides this, the claims are not in any sense mutual. The claim of the executor, if he has any, is against the bank. The assessment never was due to the bank, and does not belong to it. The assessment belongs to the creditors of the bank, and is recoverable by the receiver, only for the purpose of ratable distribution among them.”⁴

§ 348(b). **Government may retain money to pay debt.** The government may retain from money under its control belonging to an insolvent bank enough to discharge any lawful debt that may be due, however it may have originated.⁵

¹ *Balch v. Wilson*, 25 Minn., 299 p. 303.

² 32 Fed. R., 130.

³ *Id.*, p. 138.

⁴ *Delano v. Butler*, 118 U. S., 634.

⁵ *United States v. Cook County Nat. Bank*, 9 Biss., 55.

§ 349. **What claims to be included.** "Claims proved to the satisfaction of the Comptroller are to be included in the list, and he is also to include in the list all claims adjudicated in a court of competent jurisdiction, which shows conclusively that claims disallowed by the Comptroller may be prosecuted in a court having jurisdiction in such cases."¹

§ 350. **Allowance of expense in establishing claim.** If a claim is disallowed by the Comptroller, but afterward is established before a competent tribunal, "no provision is made by law for the payment of the expenses of the claimant in his litigation beyond the taxable costs, and necessarily that loss must fall on him as it does on every one who has the misfortune to be driven to the courts for the judicial determination of his rights."²

§ 351. **Case v. Bank.**³ A, in order to secure the payment of his note to B, pledged to him some national bank shares with authority to sell them if he failed to pay his note at maturity. Failing to do this, B sold the shares and applied to the cashier of the bank to have them transferred. The cashier refused to do so because A was indebted to the bank. Before the transfer could be enforced the bank failed, and C was appointed a receiver. In an action by B against him to recover damages for his loss, it was held that the cashier's refusal to transfer the shares was the refusal of the bank, inasmuch as he was intrusted with the power to transfer stock by the directors, and further that the court had power to order the receiver to pay the claim or certify it to the Comptroller.

§ 352. **Claim must be against bank and not officer.** Of course, a creditor cannot collect of a failed bank if his loan be to the president or other officer of the bank as an individual. In a recent case A, the president of a Vermont national bank, applied to a Canadian bank for a loan. The manager of the Canadian bank told him that his bank could not make such a loan to an individual, but would put the amount desired as a deposit in the Vermont bank, which should draw six per cent. interest while it remained there, and that bonds should be given as security. The Canadian bank drew drafts for the amount on a Boston bank, delivered them to the other, and re-

¹ Clifford, J., *Bank of Bethel v. Pahquioque Bank*, 14 Wall., p. 398; *Kennedy v. Gibson*, 8 Wall., 506.

² Waite, C. J., *White v. Knox*, 111 U. S., p. 788. ³ 100 U. S., 446.

ceived the security required. The Vermont bank indorsed the drafts, sent them to the drawee, and received the avails. The Vermont bank having failed, the receiver rejected the claim of the Canadian bank on the ground that the loan was to the president of the bank, who took the money to use in a railroad that he was building. But the court held that the loan was to the bank, and that the Canadian bank should be paid by the Comptroller from the assets ratably with other claims.¹

§ 353. **Interest.** Concerning interest on deposits, this must be paid from the time the deposit is demanded. Thus, on November 22d, 1873, a national bank in New York failed and a receiver was appointed. On the 24th of September previously, all the depositors demanded payment. Nothing was paid. But installments were afterward paid until the 20th of November, 1874, when the principal was extinguished. At each payment interest on the amount from the 24th of September, 1873, was demanded and refused. A suit was finally brought for the interest on all the deposits from that date, and also on the aggregate from the 20th of November, 1874. It was recovered, the court holding that though the Act was silent "concerning interest upon the claims before or after proof or judgment," it ought to be included in the same manner as a judgment would include interest on a claim to the time of rendering it and bear interest afterward.²

§ 354. **On what claims.** On what claims may interest be recovered? Says Judge Wallace,³ "upon all demands originating in contracts conditioned for the payment of interest, and on all demands for money due and unpaid by way of damages for the non-payment after such demands became due." Also for a balance due on deposits made in the ordinary way with the bank.

§ 355. **Suits for its recovery, how brought.** If a legal proceeding be needful to recover such interest, it cannot be maintained against the receiver or Comptroller, but it can be against the bank. "The corporation continues to exist for the purpose of being sued, notwithstanding the Comptroller has intervened pursuant to the provisions of the Act under which it

¹ *Eastern Townships Bank v. Vermont National Bank*, 22 Fed. R., 186.

² *National Bank v. Mechanics' National Bank*, 94 U. S., 437.

³ *Chemical National Bank v. Bailey*, 12 Blatchf., 480 p. 483.

was organized; and demands against it can be prosecuted to adjudication in any court of competent jurisdiction.”¹

§ 356. **Interest during receivership.** When the assets are sufficient to pay all claims and leave a surplus, the Comptroller ought to allow interest on them during the period of administration before appropriating the surplus to the shareholders. “While the Comptroller is not directed,” says Wallace, J., “by express terms, to allow interest to creditors, the act contains no language which, in terms or by implication, prohibits him from doing so. * * The interest is an incident of the debt or claim, and to be paid before distribution of the surplus.”²

§ 357. “From time to time, after full provision has been first made for refunding to the United States any deficiency in redeeming the notes of such association, the Comptroller shall make a ratable dividend of the money so paid over to him by such receiver on all such claims as may have been proved to his satisfaction or adjudicated in a court of competent jurisdiction, and, as the proceeds of the assets of such association are paid over to him, shall make further dividends on all claims previously proved or adjudicated; and the remainder of the proceeds, if any, shall be paid over to the shareholders of such association, or their legal representatives, in proportion to the stock by them respectively held.”³

Dividends to
creditors
and re-
mainder.
Rev. Stat.
Sec. 5236.

§ 358. **How paid.** “Dividends are to be paid to all creditors ratably, that is to say, proportionally. To be proportionate they must be made by some uniform rule. They are to be paid on all claims against the bank previously proved and adjudicated.

* * If the Comptroller declines to recognize the claim as valid, it must be established by the adjudication of some competent court before it can share in the distribution of assets. When adjudicated in favor of the creditor it is established as a claim against the bank and must be treated accordingly by the Comptroller.

* * It is clearly his duty, therefore, in paying dividends to take the value of the claim at [the time of the bank's insolvency] as the basis of distribution. If interest is added on one claim after that date before the percentage of dividend is calculated, it

¹ Wallace, J., *Chemical National Bank v. Bailey*, 12 Blatchf. 480 p. 483; *Bank of Bethel v. Pahquioque Bank*, 14 Wall., 383.

² *Chemical National Bank v. Bailey*, 12 Blatchf., 480 pp. 481, 482.

³ Act 1864, Sec. 50.

should be upon all, otherwise the distribution would be according to different rules, and not ratably as the law requires."¹

§ 359. **Priority of government.** With respect to the "priority given by previous statutes to the United States in the distribution of the estates of insolvent or deceased persons, or of corporations, indebted to the government," this has not been affected by the National Banking Law.²

§ 360. **Suit against receiver for misconduct as director.** When a national bank has become insolvent and a director has been appointed a receiver, against whom an action has been brought by a stockholder for misconduct as a director in common with the other directors, the Statute of Limitations begins to run from the beginning of the action, and not from the time of filing the petition by other stockholders to become parties thereto. The Statute of Limitations must be treated as though all the stockholders were originally plaintiffs.³ Furthermore, the original plaintiff can at any time before the other stockholders are made parties and before judgment, settle his own claim and execute a release and discontinue the action, but after prosecuting it to judgment, this is for the benefit of all the stockholders and he ceases to have control over it.⁴ With regard to the stockholders who do not unite in the action, having been begun for their benefit, their rights are not bound by any limitation of time after the commencement.⁵

§ 361. **Cannot be attached in suit against shareholders.** If a receiver should intend to violate, or has violated his duty in discharging the trust confided in him, he cannot be attacked in an action brought by him against the shareholders to enforce their individual liability.⁶ And if in such an action they should plead that the Comptroller had decided to pay a large amount of claims against the bank, for which it was not reponsible, and that, aside from these claims, there were means enough in his hands to meet all liabilities, the plea would be bad because of its vagueness and uncertainty.⁷

¹ Waite, C. J., *White v. Knox*, 111 U. S., 784 p. 786.

² Harlan, J., *United States v. Cook County Nat. Bank*, 9 Biss., 55 p. 60.

³ *Brinkerhoff v. Bostwick*, 99 N. Y., 185.

⁴ *Id.*

⁵ *Id.*

⁶ *Casey v. Galli*, 94 U. S., 673.

⁷ *Id.*, p. 680.

§ 362. **Expenses of receiver.** With respect to the expenses of a receivership these "shall be paid out of the assets of such association before distribution of the proceeds thereof."¹

§ 363. In 1876 Congress further provided for the election of an agent by the shareholders of an insolvent bank to take its as-
When bank may elect agent to manage its affairs.

sets from the receiver and close its affairs. The Act reads "that whenever any association shall have been or shall be placed in the hands of a receiver, as provided in section fifty-two hundred and thirty-four and other sections of said statutes, and when, as provided in section fifty-two hundred and thirty-six thereof, the Comptroller shall have paid to each and every creditor of such association, not including shareholders who are creditors of such association, whose claim or claims as such creditor shall have been proved, or allowed as therein prescribed, the full amount of such claims and all expenses of the receivership, and the redemption of the circulating notes of such association shall have been provided for by depositing lawful money of the United States with the Treasurer of the United States, the Comptroller of the Currency shall call a meeting of the shareholders of such association by giving notice thereof for thirty days in a newspaper published in the town, city, or county where the business of such association was carried on, or if no newspaper is there published, in the newspaper published nearest thereto, at which meeting the shareholders shall elect an agent, voting by ballot, in person or by proxy, each share of stock entitling the holder to one vote; and when such agent shall have received votes representing at least a majority of the stock in value and number of shares, and when any of the shareholders of the association shall have executed and filed a bond to the satisfaction of the Comptroller of the Currency, conditioned for the payment and discharge in full of any and every claim that may hereafter be proved and allowed against such association by and before a competent court, and for the faithful performance and discharge of all and singular the duties of such trust, the Comptroller and the receiver shall thereupon transfer and deliver to such agent all the undivided or uncollected or other assets and property of such association then remaining in the hands or subject to the order or control of said Comptroller and said receiver, or either of them; and for this purpose, said Comptroller and said receiver are hereby severally

When assets may be turned over to agent.

¹ Rev. Stat., Sec. 5238.

empowered to execute any deed, assignment, transfer, or other instrument in writing that may be necessary and proper; whereupon the said Comptroller and the said receiver shall, by virtue of this Act, be discharged and released from any and all liabilities to such association, and to each and all of the creditors and shareholders thereof; and such agent is hereby authorized to sell, compromise, or compound the debts due to such association upon the order of a competent court of record or of the United States Circuit Court for the district where the business of the association was carried on. Such agent shall hold, control, and dispose of the assets and property of any association which he may receive as hereinbefore provided for the benefit of the shareholders of such association as they, or a majority of them in value or number of shares, may direct, distributing such assets and property among such shareholders in proportion to the shares held by each; and he may, in his own name or in the name of such association, sue and be sued, and do all other lawful acts and things necessary to finally settle and distribute the assets and property in his hands. In selecting an agent as hereinbefore provided, administrators or executors of deceased shareholders may act and sign as the decedent might have done if living, and guardians may so act and sign for their ward or wards.¹

Forfeiture
of bank's
charter.
Rev. Stat.
Sec. 5239.

§ 364. "If the directors of any national banking association shall knowingly violate, or knowingly permit any of the officers, agents, or servants of the association to violate any of the provisions of this Title, all the rights, privileges, and franchises of the association shall be thereby forfeited. Such violation shall, however, be determined and adjudged by a proper circuit, district, or territorial court of the United States, in a suit brought for that purpose by the Comptroller of the Currency, in his own name, before the association shall be declared dissolved."²

Comptroller
may ap-
point re-
ceiver.

§ 365. In 1876 Congress further declared "that whenever any national banking association shall be dissolved, and its rights, privileges, and franchises declared forfeited, as prescribed in section fifty-two hundred and thirty-nine of the Revised Statutes of the United States, or whenever any creditor of any national banking association shall have obtained a judgment against it in any court of record, and made application, accompanied by a certificate

¹ 19 Stat. at Large, 44 C. 1 S. Ch. 156, Sec. 3.

² For entire section see § 128.

from the clerk of the court stating that such judgment has been rendered and has remained unpaid for the space of thirty days, or whenever the Comptroller shall become satisfied of the insolvency of the national banking association, he may, after due examination of its affairs, in either case, appoint a receiver, who shall proceed to close up such association, and enforce the personal liability of the shareholders, as provided in section fifty-two hundred and thirty-four of said statutes.”¹

§ 366. **Comptroller must bring suit.** Whenever section 5239 is violated the Comptroller must bring the suit for dissolution, and not the receiver. “These provisions,” said Mr. Justice Rapallo, “are evidently intended to apply to violations by these corporations of the law under which they are organized, and to subject them to the forfeiture of their corporate franchises upon such violations being established by the judgment of a court of the United States. Being organized under an act of Congress, the jurisdiction to declare a forfeiture of their franchises is very appropriately vested exclusively in the courts of the United States, and the Comptroller of the Currency is designated as the officer who shall prosecute for the purpose of having such forfeiture adjudged. It would of course be very inappropriate that such a proceeding should be instituted by a receiver who has only to deal with the assets of the bank, and the requirement that the violation should be adjudged by a court of the United States, at the suit of the Comptroller, is, by the terms of the section, made essential ‘before the association shall be declared dissolved,’ but there is nothing in the act which renders it essential for any other purpose; and it is further to be observed that this is the only provision of the act which authorizes the Comptroller to institute any action in relation to the affairs of a national bank.”²

§ 367. **Cannot be dissolved in collateral proceeding.** No charter can be dissolved in a collateral proceeding, for example, in a suit by the institution to recover money loaned. The dissolution must be ordered in a suit begun by the Comptroller.³

§ 368. “Whenever an association against which proceedings have been instituted, on account of any alleged refusal to redeem its circulating notes as aforesaid, denies having failed to do so,

Right to en-
join appoint-
ment of re-
ceiver.
Rev. Stat.
Sec. 5237.

¹ 19 Stat. at Large, 44 C. 1 S. Ch. 156, Sec. 1.

² Brinckerhoff v. Bostwick, 88 N. Y., 52 p. 57.

³ Union Gold Mining Co. v. Rocky Mountain Nat. Bank, 1 Colo., 531.

it may, at any time within ten days after it has been notified of the appointment of an agent, as provided in section fifty-two hundred and twenty-seven, apply to the nearest circuit, or district, or territorial court of the United States to enjoin further proceedings in the premises; and such court, after citing the Comptroller of the Currency to show cause why further proceedings should not be enjoined, and after the decision of the court or finding of a jury that such association has not refused to redeem its circulating notes, when legally presented, in the lawful money of the United States, shall make an order enjoining the Comptroller, and any receiver acting under his direction, from all further proceedings on account of such alleged refusal."

Proceedings
to enjoin
Comptrol-
ler.
Rev. Stat.
Sec. 736.

§ 369. The Revised Statutes also provide that "all proceedings by any national banking association to enjoin the Comptroller of the Currency, under the provisions of any law relating to national banking associations, shall be had in the district where such association is located."

§ 370. **Meaning of Statute.** The section last quoted formed a part of the proviso to the fiftieth section of the Law of 1864. While it was in force Judge Woodruff said: "This proviso contemplates a proceeding (not necessarily a formal suit or action, but a proceeding summary in form) instituted by the association, to continue its own existence, preserve its property, and avoid an *ex parte* receivership, ordered by the Comptroller to have effect and operate upon the association and its property in the very place where it is located. Such receiver might be appointed upon erroneous information or mistaken evidence, and considerations of convenience required that the association should have speedy and convenient means within its own district, and where the proofs must necessarily be, of rectifying a mistake and disproving the allegations upon which such *ex parte* action of the Comptroller had proceeded."¹

Voluntary
liquidation.
Rev. Stat.
Sec. 5220.

Notice to be
given.
Rev. Stat.
Sec. 5221.

§ 371. "Any association may go into liquidation and be closed by the vote of its shareholders owning two-thirds of its stock."

§ 372. "Whenever a vote is taken to go into liquidation it shall be the duty of the board of directors to cause notice of this fact to be certified, under the seal of the association, by its president or cashier, to the Comptroller of the Currency, and publication thereof to be made for a period of two months in a newspa-

¹ Van Antwerp v. Hulburd, 7 Blatchf., p. 437.

per published in the city of New York, and also in a newspaper published in the city or town in which the association is located, or if no newspaper is there published, then in the newspaper published nearest thereto, that the association is closing up its affairs, and notifying the holders of its notes and other creditors to present the notes and other claims against the association for payment."

§ 373. While the National Banking Law provided for enforcing the individual liability of a shareholder of a bank that passed into involuntary liquidation, it was silent concerning the method of procedure whenever a bank should voluntarily liquidate. But the omission was supplied by the Act of June 30, 1876. The second section declares "that when any national banking association shall have gone into liquidation under the provisions of section five thousand two hundred and twenty of said statutes, the individual liability of the shareholders provided for by section fifty-one hundred and fifty-one of said statutes may be enforced by any creditor of such association, by bill in equity in the nature of a creditor's bill, brought by such creditor on behalf of himself and of all other creditors of the association, against the shareholders thereof, in any court of the United States having original jurisdiction in equity for the district in which such association may have been located or established."¹

Liability of
shareholders.

§ 374. **Meaning of Statute.** "In the case of involuntary liquidation under the supervision of the Comptroller of the Currency, the receiver appointed by him is authorized and required, not only to collect and apply the proper assets of the bank to the payment of its debts, but also, so far as may be necessary, to enforce the individual liability of the shareholders. It thus appears that the enforcement of this liability is a part of the liquidation of the affairs of the bank; at least, so closely connected with it as to constitute but one continuous transaction. When in the case of voluntary liquidation, the proceeding is instituted by one or more creditors for the benefit of all, by means of the jurisdiction of a court of equity, there seems to be no reason why the nature of the proceeding should be considered as changed."²

¹ 19 Stat. at Large, 44 C. 1 S. Ch. 156, Sec. 2.

² Matthews, J., *Richmond v. Irons*, 121 U. S., p. 49.

CHAPTER XVII.

BANK EXAMINATIONS AND REPORTS.

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| <p>§ 375. Appointment and powers of bank examiner.</p> <p>376. Compensation.</p> <p>377. Visitorial powers.</p> <p>378. Comptroller to examine banks in District of Columbia.</p> <p>379. Reports to Comptroller.</p> | <p>§ 380. Oath to reports.</p> <p>381. Meaning of section.</p> <p>382. Dividends and earnings to be reported.</p> <p>383. Penalty for failure to report.</p> <p>384. Savings banks and trust companies must report.</p> |
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Apportionment and powers of bank examiner. Rev. Stat. Sec. 5240.

§ 375. "The Comptroller of the Currency, with the approval of the Secretary of the Treasury, shall, as often as shall be deemed necessary or proper, appoint a suitable person or persons to make an examination of the affairs of every banking association, who shall have power to make a thorough examination into all the affairs of the association, and, in doing so, to examine any of the officers and agents thereof on oath; and shall make a full and detailed report of the condition of the association to the Comptroller. [Every person appointed to make such examination shall receive for his services at the rate of five dollars for each day by him employed in such examination, and two dollars for every twenty-five miles he shall necessarily travel in the performance of his duty, which shall be paid by the association by him examined.] But no person shall be appointed to examine the affairs of any banking association of which he is a director or other officer."

Compensation.

§ 376. The sentence above bracketed relating to compensation was superseded by the law of 1875, which enacted "that all persons appointed to be examiners of national banks not located in the redemption cities specified in section five thousand one hundred and ninety two of the Revised Statutes of the United States, or in any one of the states of Oregon, California, and Nevada, or in the territories, shall receive compensation for such examination as follows: For examining national banks having a capital less than one hundred thousand dollars, twenty dollars; those having a capital of one hundred thousand dollars and less than

three hundred thousand dollars, twenty-five dollars; those having a capital of three hundred thousand dollars and less than four hundred thousand dollars, thirty-five dollars; those having a capital of four hundred thousand dollars and less than five hundred thousand dollars, forty dollars; those having a capital of five hundred thousand dollars and less than six hundred thousand dollars, fifty dollars; those having a capital of six hundred thousand dollars and over, seventy-five dollars; which amounts shall be assessed by the Comptroller of the Currency upon, and paid by, the respective associations so examined, and shall be in lieu of the compensation and mileage heretofore allowed for making said examinations; and persons appointed to make examination of national banks in the cities named in section five thousand one hundred and ninety-two of the Revised Statutes of the United States, or in any one of the states of Oregon, California, and Nevada, or in the territories, shall receive such compensation as may be fixed by the Secretary of the Treasury upon the recommendation of the Comptroller of the Currency; and the same shall be assessed and paid in the manner hereinbefore provided.”¹

§ 377. “No association shall be subject to any visitorial powers other than such as are authorized by this Title, or are vested in the courts of justice.”

Visitorial power.
Rev. Stat.
Sec. 5241.

§ 378. “The Comptroller of the Currency, in addition to the powers conferred upon him by law for the examination of national banks, is further authorized, whenever he may deem it useful, to cause examination to be made into the condition of any bank in the District of Columbia organized under act of Congress. The Comptroller, at his discretion, may report to Congress the results of such examination. The expense necessarily incurred in any such examination shall be paid out of any appropriation made by Congress for special bank examinations.”

Comptroller to examine banks in District of Columbia.
Rev. Stat.
Sec. 532.

§ 379. “Every association shall make to the Comptroller of the Currency not less than five reports during each year, according to the form which may be prescribed by him, verified by the oath or affirmation of the president or cashier of such association, and attested by the signature of at least three of the directors. Each such report shall exhibit, in detail and under appropriate heads, the resources and liabilities of the association at the close of business on any past day by him specified; and shall be transmitted

Reports to Comptroller.
Rev. Stat.
Sec. 5211.

¹ 18 Stat. at Large, 43 C. 2 S. Ch. 89.

to the Comptroller within five days after the receipt of a request or requisition therefor from him, and in the same form in which it is made to the Comptroller shall be published in a newspaper published in the place where such association is established, or if there is no newspaper in the place, then in the one published nearest thereto in the same county, at the expense of the association; and such proof of publication shall be furnished as may be required by the Comptroller. The Comptroller shall also have power to call for special reports from any particular association whenever in his judgment the same are necessary in order to a full and complete knowledge of its condition."

Oath to re-
ports-

§ 380. In 1881 Congress enacted "that the oath or affirmation required by section fifty-two hundred and eleven of the Revised Statutes, verifying the returns made by national banks to the Comptroller of the Currency, when taken before a notary public properly authorized and commissioned by the state in which such notary resides and the bank is located, or any other officer having an official seal, authorized in such state to administer oaths, shall be a sufficient verification as contemplated by said section fifty-two hundred and eleven: *Provided*, That the officer administering the oath is not an officer of the bank."¹

§ 381. **Meaning of section.** An indictment for perjury against an officer of a national bank for a willfully false declaration or statement in a report is bad if before the enactment of the above law, his oath verifying the report was taken before a notary public appointed by a state, as he had no authority at that time under any national law to administer the oath.²

Dividends
and earnings
to be re-
ported.
Rev. Stat.
Sec. 5212.

§ 382. "In addition to the reports required by the preceding section, each association shall report to the Comptroller of the Currency, within ten days after declaring any dividend, the amount of such dividend, and the amount of net earnings in excess of such dividend. Such reports shall be attested by the oath of the president or cashier of the association."

Penalty for
failure to re-
port.
Rev. Stat.
Sec. 5213.

§ 383. "Every association which fails to make and transmit any report required under either of the two preceding sections shall be subject to a penalty of one hundred dollars for each day after the periods, respectively, therein mentioned, that it delays to make and transmit its report. Whenever any association de-

¹ 21 Stat. at Large, 46 C, 3 S. Ch. 82.

² United States v. Curtis, 107 U. S., 671.

lays or refuses to pay the penalty herein imposed, after it has been assessed by the Comptroller of the Currency, the amount thereof may be retained by the Treasurer of the United States, upon the order of the Comptroller of the Currency, out of the interest, as it may become due to the association, on the bonds deposited with him to secure circulation. All sums of money collected for penalties under this section shall be paid into the Treasury of the United States."

§ 384. In 1876 Congress further enacted "that all savings banks or savings and trust companies organized under authority of any act of Congress shall be, and are hereby, required to make, to the Comptroller of the Currency, and publish, all the reports which national banking associations are required to make and publish under the provisions of sections fifty-two hundred and eleven, fifty-two hundred and twelve and fifty-two hundred and thirteen, of the Revised Statutes, and shall be subject to the same penalties for failure to make or publish such reports as are therein provided; which penalties may be collected by suit before any court of the United States in the district in which said savings banks or savings and trust companies may be located. And all savings or other banks now organized, or which shall hereafter be organized, in the District of Columbia, under any act of Congress, which shall have capital stock paid up in whole or in part, shall be subject to all the provisions of the Revised Statutes, and of all acts of Congress applicable to national banking associations, so far as the same may be applicable to such savings or other banks: *Provided*, That such savings banks now established shall not be required to have a paid in capital exceeding one hundred thousand dollars."¹

Savings
banks and
trust com-
panies must
report.

¹ 19 Stat. at Large, 44 C. 1 S. Ch. 156, Sec. 6.

CHAPTER XVIII.

TAXATION.

Rights Conferred on the States.

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| <p>§ 385. Legislation of 1864.
 386. Remarks on that Act.
 387. Legislative construction of the Act.
 387(a). Remarks of Harlan, J., on Act of 1863.
 388. Present law for taxing banks by states.
 389. National act need not be embodied in state act.
 390. Territories included with states.
 391. Only shares can be assessed.
 392. Tax on capital not equivalent to tax on shares.</p> | <p>§ 393. Bank can be taxed by law taxing all shares of moneyed corporations.
 394. Personal property, safes, etc., not taxable.
 395. Assessment must be against shareholder.
 396. And is good though money paid for shares has been assessed.
 397. Bank may be required to pay shareholder's tax.
 397(a). If having money belonging to him.</p> |
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Restrictions—Equality and Place.

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| <p>§ 398. Two limitations on power of state to tax.
 399. Davis, J., on second limitation of equality.
 400. Meaning of "moneyed capital" by Wallace, J.
 400(a). Remarks of Matthews, J.
 400(b). Mercantile Bank case.
 400(c). Newark Banking Company v. Newark.
 401. General corporations are not moneyed corporations.
 401(a). First National Bank v. Waters.
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 402. Five forms of unfriendly discrimination.
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 403(a). People v. Weaver.</p> | <p>§ 403(b). Davenport National Bank v. Board of Equalization.
 403(c). City National Bank v. Paducah.
 404. Illegal administration of the law in valuing.
 404(a). Pelton v. National Bank.
 404(b). Cummings v. Merchants' National Bank.
 405. Honest mistake of judgment.
 406. Rule governing deductions.
 407. Two kinds, direct and indirect, from exemptions to other moneyed capital.
 408. Intention of the law.
 409. Substantial equality required.
 409(a). Boyer v. Boyer.
 410. Cases in which deductions were properly refused.</p> |
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- § 410(a). *First National Bank v. Township*.
 410(b). *Mercantile Bank case*.
 410(c). *Peavey v. Town of Greenfield*.
 410(d). *McVeagh v. City of Chicago*.
 410(c). *Rosenburg v. Weekes*.
 410(f). *Maguire v. Board of Revenue*.
 410(g). *McAden v. Commissioners*.
 411. Cases in which deductions should have been made. *Ruggles v. City of Fond du Lac*.
 411(a). *Pollard v. State*.
 411(b). *Miller v. Heilbron*.
 411(c). *Supervisors v. Stanley*.
 411(d). *Evansville Bank v. Britton*.
 412. If shareholder has no debts no inequality arises.
 413. Assessment valid until deduction for debts is demanded.
 414. Deduction of valuation of real estate.
 414(a). New York cases.
 414(b). Bank building on leased lot.
 414(c). When building cannot be taxed.
 414(d). Kentucky case.
 415. Deduction presumed to have been made.
 416. Deduction of national securities. Bank notes.
 416(a). *National Bank v. Commonwealth*.
- § 417. Value of national bank securities not to be deducted from valuation of shares.
 417(a). *Exchange National Bank v. Miller*.
 418. When they can not be deducted from capital of state bank.
 418(a). When they can be.
 419. Deduction of state bonds.
 420. Deduction under charter older than National Banking Law.
 421. When deduction from municipal taxation does not produce inequality.
 422. Deduction of surplus fund.
 423. When shares must be assessed.
 423(a). *Austin v. Aldermen*.
 423(b). *McMahon v. Palmer*.
 423(c). New Jersey case.
 423(d). Michigan case.
 424. What may be required of shareholders concerning residence.
 425. Bank not taxable in another state.
 426. Taxation of non-residents.
 426(a). *Providence Institution v. City of Boston*.
 426(b). *Moore v. Mayor*.
 427. Cannot tax shares of bank in another state.

Valuations, Omitted Shares, Denial of Municipal Taxation, Converted and Insolvent Banks, Lien.

- § 428. Shares may be assessed at market value.
 428(a). *Hepburn v. School Directors*.
 429. Taxation of omitted shares.
 429(a). New York cases.
 430. Cannot be taxed by municipalities.
- § 431. How state bank converted into national, shall be taxed.
 432. Taxation of insolvent bank.
 432(a). Collection of tax due national government.
 433. Tax may be lien.

Constitutional Questions, Rights to Bank Inspection, Remedies, Power of Tax Collector.

- § 434. Constitutionality of particular tax laws. *Cummings v. National Bank*.
 434(a). Other cases.
 435. State tax officers cannot inspect national banks.
 436. When injunction may be issued to restrain collection.
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 438. Must pay amount due before applying.
 439. When national bank can have collection enjoined.
 440. Tax illegally collected may be recovered.
 441. Powers of tax collector.

Circulation.

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| <p>§ 442. Capital of state bank converted into national.</p> <p>443. When circulation to be exempt from tax.</p> <p>444. Tax on private or state bank notes.</p> <p>445. Tax on municipal notes.</p> <p>446. Meaning of last two sections.</p> <p>447. Notes of individuals and companies.</p> <p>448. Semi-annual return of circulation, deposits, capital, etc.</p> | <p>§ 449. When amounts shall be estimated.</p> <p>450. Returns on circulation of state bank converted.</p> <p>451. What sections apply to national banks.</p> <p>452. U. S. tax on circulation, deposits, and capital.</p> <p>453. Semi-annual return.</p> <p>454. How tax may be collected.</p> <p>455. Refunding excess.</p> |
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Checks.

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| <p>§ 456. Tax on bank checks.</p> <p>457. What checks exempt.</p> <p>458. Checks as evidence.</p> <p>459. Penalty for issuing unstamped checks.</p> | <p>§ 460. Cancellation and fraudulent use.</p> <p>461. Other methods of cancelling.</p> <p>462. Construction of law on subject.</p> |
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Dividends.

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| <p>§ 463. Taxation of dividends.</p> | <p>§ 464. Liability for reduced tax.</p> |
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§ 385. **Legislation of 1864.** Previous to enacting the Law of 1864, the states had no power to tax the shares of national banks, whose capital was entirely invested in securities of the United States.¹ That Congress had the right to exempt the shares from state taxation, so far as they represented capital invested in national securities, was unquestioned² or, in the words of Chief Justice Beasley, of New Jersey, "that to the extent in which United States securities stand as the capital or property of such banks, the shares of stock owned by private persons can be taxed by state authority only, with the sanction of Congress and in the mode prescribed by that body."³ In 1864, Congress, after prescribing what taxes should be imposed and collected by the general government "provided that nothing in this Act shall be construed to prevent all the shares in any of the said associations,

¹ Bank of Commerce v. New York City, 2 Black, 620; The Bank Tax Case, 2 Wall., 200; Newark City Bank v. Assessor, 30 N. J. Law, 13; State v. Haight, 31 Id., 399; Stetson v. City of Bangor, 56 Me., 274; Craft v. Tuttle, 27 Ind., 332; City of Evansville v. Bayard, 39 Id., 450; Commonwealth v. Girard Bank, 1 Pearson's Dec., 366; Hubbard v. Board of Supervisors, 23 Iowa, 130.

² Flint v. Board of Aldermen, 99 Mass., 141.

³ State v. Haight, 31 N. J. Law, 399 p. 413.

held by any person or body corporate, from being included in the valuation of the personal property of such person or corporation in the assessment of taxes imposed by or under state authority at the place where such bank is located, and not elsewhere, but not at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such state: *Provided further*, That the tax so imposed under the laws of any state upon the shares of any of the associations authorized by this act shall not exceed the rate imposed upon the shares in any of the banks organized under authority of the state where such association is located: *Provided, also*, That nothing in this Act shall exempt the real estate of associations from either state, county, or municipal taxes to the same extent, according to its value, as other real estate is taxed.”¹

§ 386. **Remarks on above Act.** This Act, said Judge Nelson, did “not only recognize in express terms, the sovereign right of the state to tax, but prescribe regulations and duties to these associations with a view to disembarass the officers of the state engaged in the exercise of this right. Nothing, it would seem, could be made plainer or more direct and comprehensive on the subject.”² Judge Hunt, another member of the same tribunal, also remarked that it “was not intended to curtail the state power on the subject of taxation. It simply required that capital invested in national banks should not be taxed at a greater rate than like property similarly invested. It was not intended to cut off the power to exempt particular kinds of property if the legislature chose to do so. Homesteads, to a specified value, a certain amount of household furniture, the property of clergymen to some extent, school houses, academies, and libraries, are generally exempt from taxation. The discretionary power of the legislature of the states over all these subjects remains as it was before the Act of Congress of June, 1864. The plain intention of that statute was to protect the corporations formed under its authority from unfriendly discrimination by the states in the exercise of their taxing power. That particular persons or particular articles are relieved from taxation is not a matter to which either class can object.”³

¹ Act 1864, Sec. 41

² Van Allen v. The Assessors, 3 Wall., 573 p. 586; Lionberger v. Rouse, 9 Wall., 468; People v. The Commissioners, 4 Wall., 244.

³ Adams v. Nashville, 95 U. S., 19 p. 22.

After the enacting of this Law the right of a state to tax the shares of national banks was clearly conferred,¹ but a city, which had previously enjoyed the right to levy and collect taxes on the banking institutions within its limits, could not under the right thus derived from the state impose a tax on national banks.²

§ 387. **Legislative construction of Act of 1864.** One of the first questions that arose in administering this Statute was, what did Congress mean when declaring that the assessment of the shares of a national bank should be "at the place where such bank is located?" The place might be either the state, county, or municipal district having a right to impose taxes. In *State v. Hart*³ the counsel for the prosecution contended that no taxes could be imposed except in one district, which must be the smallest established by the laws of the state. The defendant contended that the place meant the district imposing a particular tax, and the latter view was adopted by the court. Thus "the place of location, with regard to county taxes, would be the county; and with regard to state taxes, would be the state."⁴

To settle this question, in 1868 Congress enacted "that the words 'place where the bank is located, and not elsewhere,' in section forty-one of the 'Act to provide a national currency,' approved June third, eighteen hundred and sixty-four, shall be construed and held to mean, the state within which the bank is located; and the legislature of each state may determine and direct the manner and place of taxing all the shares of national banks located within said state, subject to the restriction that the taxation shall not be at a greater rate than is assessed upon any other moneyed capital in the hands of individual citizens of such state: *And provided always*, That the shares of any national bank owned by non-residents of any state, shall be taxed in the city or town where said bank is located, and not elsewhere."⁵

§ 387 (a). **Remarks of Harlan, J., on Act of 1868.** In construing this Act Judge Harlan has remarked "that the va-

¹ *Mintzer v. County of Montgomery*, 54 Pa., 139.

² *City of Pittsburgh v. First National Bank*, 55 Id., 45.

³ 31 N. J. Law, 434.

⁴ *State v. Haight*, 31 N. J. Law, 399 p. 415; *Packard v. City of Lewiston*, 55 Me., 456; *Mayor v. Thomas*, 5 Cold., 600.

⁵ Act Feb. 10, 1868, 15 Stat. at Large, 40 C. 1 S. Ch. 7. This Act "had no retroactive effect upon any proceedings previously had under" any state statute, *Abbott v. Inhabitants of Bangor*, 56 Me., 310.

lidity of such state taxation was thereafter to be determined by the inquiry, whether it was at a greater rate than was assessed upon other moneyed capital in the hands of individual citizens, and not necessarily by a comparison with the particular rate imposed upon shares in state banks. The effect, if not the object, of the latter act was to preclude the possibility of any such interpretation of the Act of Congress as would justify states, while imposing the same taxation upon national bank shares as upon shares in state banks, from discriminating against national bank shares, in favor of moneyed capital not invested in state bank stock.”¹

§ 388. These Acts have been incorporated into the Revised Statutes in the following form: “Nothing herein shall prevent all the shares² in any association from being included in the valuation of the personal property of the owner or holder of such shares, in assessing taxes imposed by authority of the state within which the association is located; but the legislature of each state may determine and direct the manner and place of taxing all the shares of national banking associations located within the state, subject only to the two restrictions, that the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such state, and that the shares of any national banking association owned by non-residents of any state shall be taxed in the city or town where the bank is located, and not elsewhere. Nothing herein shall be construed to exempt the real property of associations from either state, county, or municipal taxes, to the same extent, according to its value, as other real property is taxed.”

Present law
for taxing
banks by
state.
Rev. Stat.
Sec. 5219.

§ 389. **National act need not be embodied in state act.** In enacting a state law to tax the shares of national banking associations, it is not needful to embody therein the above-mentioned section. Says Judge Moore, speaking for the highest court in Texas: “The act of Congress authorizing the assessment does not contemplate nor require that the restrictions upon the power given to the state to levy such tax shall be embodied or set forth in the law making the assessment. It is the violation of

¹ Boyer v. Boyer, 113 U. S. p. 691.

² The term share means “the entire interest of the shareholder,” Nelson, J., Van Allen v. The Assessors, 3 Wall., p. 588. “Share” and “stock” are synonymous, Harrison v. Vines, 46 Texas, p. 21.

the condition upon which the authority is given which invalidates the levy, and not the mere failure to accompany the levy with a declaration that the condition had not been and would not be violated by the state.”¹

§ 390. **Territories included with states.** The right to tax national bank shares includes the territories as well as the states.² In other language the word “state” in the law and amendments means also territory.³

§ 391. **Only shares can be assessed.** The capital stock cannot be assessed by the states, but only the shares and against their owners, in the same way as other property.⁴ Said Judge Dillon: “Congress has limited the states to taxation upon the shares in national banks as distinguished from taxation of the banks *eo nomine* upon their property or capital, and if so, the states could not evade the restrictions of the act of Congress by requiring the value of the property of the bank to be added to the value of the shares otherwise ascertained, and thus produce an unfavorable discrimination in the taxation of bank shares.”⁵

“The authority to tax shares in national banking associations,” said Stone, J., in *Maguire v. Board of Revenue*,⁶ for “state purposes is uniformly held to be derived from the act of Congress which confers the power.”⁷ Without such statutory concession, no such tax could be levied. The power is conferred, not in general

¹ *Harrison v. Vines*, 46 Texas, 15 p. 22; *Rosenberg v. Weekes*, 4 S. W. Rep., 899.

² *Board of Commissioners v. Davis*, 12 Pacific Rep., 688; *Salt Lake City Nat. Bank v. Golding*, 2 Utah, 1; *People v. Moore*, 1 Idaho, 504.

³ *People v. Moore*, 1 Idaho, 504.

⁴ *Bradley v. People*, 4 Wall., 459; *Van Allen v. The Assessors*, 3 Id., 573; *Lionberger v. Rouse*, 9 Id., 468, affg. 43 Mo., 67; *National Bank v. Commonwealth*, Id., 353; *First National Bank v. Meredith*, 44 Mo., 500; *Curtis v. Ward*, 58 Id., 295; *City of Springfield v. First National Bank*, 87 Id., 441; *Hubbard v. Board of Supervisors*, 23 Iowa, 130; *Craft v. Tuttle*, 27 Ind., 332; *Wright v. Stilz*, 27 Id., 338; *Smith v. First National Bank*, 17 Mich., 479; *City of Pittsburgh v. First National Bank*, 55 Pa., 45 p. 51; *Collins v. Chicago*, 4 Biss., 472. The Supreme Courts of Wisconsin and Ohio decided otherwise, *Van Slyke v. State*, 23 Wis., 655; *Bagnall v. State*, 25 Id., 112; *Frazer v. Siebern*, 16 Ohio, 614.

⁵ *St. Louis National Bank v. Papin*, 4 Dill., 29.

⁶ 71 Ala., p. 412.

⁷ *Farmers & Mechanics' National Bank v. Dearing*, 91 U. S., 29; *Pollard v. State*, 65 Ala., 628.

terms, but with limitations. * * The leading policy of these restrictions cannot be misunderstood. The first was intended to prevent unfriendly discriminating assessments against investments in the stock of national banking associations, lest thereby such investments should be discouraged and hindered by excessive burdens. Hence, the burden should be no greater than that levied by the state on other moneyed capital in the hands of individual citizens. You may tax the shares, said Congress, for the support of your government, which protects them in common with all other material interests, but you cannot lay upon them heavier burdens than you lay on other moneyed capital. The act discriminates carefully between the capital stock of such banking associations, and the shares in such capital stock."

§ 392. **A tax on capital is not equivalent to a tax on shares,** and therefore if state banks are taxed only on their capital a statute imposing a tax on the shares of national banks is void.¹ So is a law authorizing an assessment of them in gross.² But a statute which imposes a tax "on bank stock of fifty cents on each share thereof equal to one hundred dollars of stock therein owned by individuals, corporations, or societies," is a tax on the shares of stockholders and is valid.³

§ 393. **Bank can be taxed by law taxing all shares of moneyed corporations.** A statute which authorizes "the taxation of all shares in moneyed corporations," will justify the taxing of national bank shares.⁴ But the laws of several states at the time Congress permitted them to impose such a tax, did not authorize the assessment and collection of a tax on the bank shares of residents⁵ or non-residents of the state⁶ or non-residents of the place where the bank was located.⁷

¹ *Van Allen v. Assessors*, 3 Wall., 573, revsg 33 N. Y., 161; *Bradley v. People*, 4 Wall., 459, revsg 39 Ill., 130. A state can tax the real estate or the shares, but not the capital of a national bank. This would be double taxation, which is not permitted by the national nor by some of the state laws. *County Commissioners v. Mechanics' National Bank*, 48 Md., 117.

² *National Commercial Bank v. Mayor*, 62 Ala., 284; *Sumter County v. National Bank*, Id., 464.

³ *National Bank v. Commonwealth*, 9 Wall., 353.

⁴ *Stetson v. City of Bangor*, 56 Me., 274.

⁵ *Smith v. Webb*, 11 Minn., 500; *Maguire v. Board of Revenue*, 71 Ala.

401 ⁶ *Abbott v. City of Bangor*, 54 Me., 540.

⁷ *Howell v. Village of Cassopolis*, 35 Mich., 471.

§ 394. **Personal property, safes, etc., not taxable.** The personal property and assets of national banks, such as safes, office furniture, etc., are not taxable.¹

§ 395. **Assessment must be against shareholder.** As the assessment must be made against shareholders, the refusal of a bank officer to give their names to an assessor will not justify him in making the assessment and enforcing the same against the property of the bank.²

§ 396. **And is good though money paid for shares has been assessed.** A shareholder may be assessed though the money with which he has paid for his shares may have been previously taxed the same year as money. Thus, a tax was levied on money belonging to S on the first day of January. In March he bought with this money national bank shares. It was decided that these also could be assessed under a statute that provided for assessing persons who should hold bank stock on April first of the same year.³

§ 397. **Bank may be required to pay shareholders' tax.** Though a bank cannot be taxed on its capital, but only on its real estate, it may be required to pay the taxes assessed on its shareholders. This question arose in Kentucky, where a statute had been passed requiring the cashier of a bank whose stock was taxed to pay the amount of the tax. Judge Miller, speaking for the court, said: "The most important agents for the federal government are its officers, but no one will contend that when a man becomes an officer of the government he ceases to be subject to the laws of the state. * * The agencies of the federal government are only exempted from state legislation so far as that legislation may interfere with, or impair their efficiency in performing the functions by which they are designed to serve that government. * * We do not see the remotest probability of this in their being required to pay the tax which their stockholders owe to the state for the shares of their capital stock when the law of the federal government authorizes the tax."⁴ But if the

¹ *National State Bank v. Young*, 25 Iowa, 311; see *Hubbard v. Board of Supervisors*, 23 Iowa, 130.

² *City of Springfield v. First National Bank*, 87 Mo., 441; *Lionberger v. Rouse*, 9 Wall., 463, affg 43 Mo., 67; *First National Bank v. Meredith*, 44 Id., 500. ³ *City of Richmond v. Scott*, 48 Ind., 568; *Stilz v. Tutewiler*, Id., 600.

⁴ *National Bank v. Commonwealth*, 9 Wall., 353 p. 361; *Waite v. Dowley*, 94 U. S., 527; *First National Bank v. Douglas County*, 3 Dill., 330.

law requiring a bank to pay the taxes assessed against its shareholders should depend on an invalid law, for example, one taxing their shares in gross, the bank could not be required to pay them.¹

§ 397(a). **If having money belonging to him.** This is a statutory requirement, however, consequently the bank is not liable for the taxes, unless it has in its possession dividends or other property belonging to its shareholders.² Under the Kentucky statute, which was construed in *National Bank v. Commonwealth*,³ the banking association was made liable for the taxes levied on the shares, and the court declared that such a statute could be enacted. The Iowa decision does not announce a different rule, the court simply declares that the statute does not authorize the national banks in that state to do this. The competency of the state to enact such a statute as was passed by the Kentucky legislature was not questioned.

§ 398. **Limitations on state's power to tax.** While the states are thus permitted to extend their taxing power over national banks, Congress has imposed two limitations: one is that the shares of a non-resident cannot be assessed only "where such bank is located;" and the other is that the taxation by the state shall not exceed the rate imposed on the shares of state organization. In many of the cases the national banks have claimed that they were not liable under one or the other of these limitations. In *Van Allen v. The Assessors*,⁴ the state of New York had enacted that the shares in national banks should be taxed "but not at a greater rate than is assessed upon other moneyed capital in the hands of individuals of this state." The state banks were taxed on their capital, but not on their shares. It was held that a tax on their capital was not equivalent to a tax on the shares of stockholders, because as the capital of the state banks might consist of the bonds of the United States.

§ 399. **Equality required.** In construing this limitation four years afterward, Judge Davis, speaking for the United States Supreme Court, said: "Congress meant no more by the second limitation in the proviso to the forty-first section of the National Bank-

¹ *Sumter County v. National Bank*, 62 Ala., 464.

² *Hershire v. First National Bank*, 35 Iowa, 272.

³ 9 Wall., 353.

⁴ 3 Wall., 573, *revsg City of Utica v. Churchill*, 33 N. Y., 161.

ing Act than to require of each state, as a condition to the exercise of the power to tax the shares in national banks, that it should, as far as it had the capacity, tax in like manner the shares of banks of issue of its own creation.”¹ This principle was applied in the following case that arose in Missouri. The state had two banks of issue which could not be taxed beyond a certain figure without infringing their charter; but the state had many other banks which possessed much larger capital than the two first mentioned. A tax was laid on all shares of stock in banks and incorporated companies. It was held that the inability of the state to collect a tax for a smaller amount on the two banks of issue, did not prevent it from collecting a tax for a larger amount on the shares of the national banks.²

§ 400. **Meaning of moneyed capital.** Before reviewing the cases in which the question has been raised whether national banks were assessed at a greater rate than “other moneyed capital,” this phrase may be defined; and the cases reviewed in which the courts have decided that the corporations, favored by the taxing power were not moneyed corporations like the national banks, and to which, therefore, the national statute relating to the state taxing of national banks did not apply. Judge Wallace has said that “the term ‘moneyed capital in the hands of individual citizens’ more aptly describes ready money or capital invested in private banking than it does capital invested in manufacturing corporations, insurance companies and the like. As originally used in the National Banking Act of June 3d, 1864, it signified something different from capital invested in state banking corporations, because it was provided originally that the taxation by the states should not exceed that imposed on moneyed capital in the hands of individual citizens, or that imposed ‘upon the shares in any of the banks organized under authority of the state.’ It is hardly appropriate to call shares in manufacturing or insurance corporations ‘moneyed capital in the hands of individual citizens,’ and, if it had been intended to exclude all capital thus invested, it would have been easy to do so under some such comprehensive term as ‘personal property.’”³

¹ *Lionberger v. Rouse*, 9 Wall., p. 476.

² *Id.*, 468.

³ *Wallace, J., First National Bank v. Waters*, 19 Blatchf., p. 247.

§ 400(a). **Remarks of Matthews, J.** In the *Mercantile Bank* case the terms "moneyed capital," says Matthews, J., "include shares of stock or other interests owned by individuals in all enterprises in which the capital employed in carrying on its business is money, where the object of the business is the making of profit by its use as money. The moneyed capital thus employed is invested for that purpose in securities by way of loan, discount or otherwise, which are from time to time, according to the rules of the business, reduced again to money and reinvested. It includes money in the hands of individuals employed in a similar way, invested in loans, or in securities for the payment of money, either as an investment of a permanent character, or temporarily with a view to sale or repayment and reinvestment. In this way the moneyed capital in the hands of individuals is distinguished from what is known generally as personal property."¹

§ 400(b). **Mercantile Bank v. New York.** In New York the national and state banks were assessed and taxed on the value of their shares, but in assessing them the shareholders were allowed the same deductions and exceptions as were allowed in assessing the value of other taxable personal property of citizens of the state. In 1886 the national banks claimed that the taxes assessed against them were illegal and void, because they were at a greater rate than those assessed on other moneyed capital belonging to the citizens of the state. The greater rate was established, not formally, but by exempting from individual taxation a large amount of moneyed capital aggregating \$1,686,000,000. This claim of the national banks was not sustained for the reasons, that all of the exempted capital, excluding that of trust companies and savings banks, was not moneyed capital, as meant by the law.²

Nor was the claim sustained with respect to the trust companies: first, because they, too, "are not in any proper sense of the word banking institutions." After enumerating their powers the court adds, "that trust companies are not banks in the commercial sense of that word, and do not perform the functions of banks in carrying on the exchanges of commerce. They receive money on deposit, it is true, and invest it in loans, and so deal, therefore, in money and securities for money in such a way as properly to

¹ *Mercantile Bank v. New York*, 121 U. S., 138 p. 157; *McMahon v. Palmer*, 102 N. Y., 176.

² *Id.*

bring the shares of stock held by individuals therein within the definition of moneyed capital in the hands of individuals, as used in the act of Congress.¹ Second, the court failed "to find in the record any sufficient ground to believe that the rate of taxation, which in fact falls upon this form of investment of moneyed capital, is less than that imposed upon shares of stock in national banks."²

Nor was the claim sustained with respect to the savings banks, because their deposits are not moneyed capital in the same sense as national bank shares. Said the Court: "It cannot be denied that these deposits constitute moneyed capital in the hands of individuals within the terms of any definition which can be given to that phrase; but we are equally clear that they are not within the meaning of the act of Congress in such a sense as to require that, if they are exempted from taxation, shares of stock in national banks must thereby also be exempted from taxation. No one can suppose for a moment that savings banks come into any possible competition with national banks of the United States. They are what their name indicates, banks of deposit for the accumulation of small savings belonging to the industrious and thrifty. * * However large, therefore, may be the amount of moneyed capital in the hands of individuals, in the shape of deposits in savings banks as now organized, which the policy of the state exempts from taxation for its own purposes, that exemption cannot affect the rule for the taxation of shares in national banks, provided they are taxed at a rate not greater than other moneyed capital in the hands of individual citizens otherwise subject to taxation."³

The national banks also claimed that the exemption of bonds of the city of New York and of shares owned by citizens of the state in corporations of other states established a greater rate of taxation for themselves than was established for other moneyed capital. The first of these claims was set aside on the grounds: first, that the amount exempted was not large enough "to make a material difference in the rate assessed upon national bank shares;" and, second, that as they "from their nature * * are not ordinarily the subjects of taxation, they are not within the reason of the rule established by Congress for the taxation of national

¹ *Mercantile Bank v. New York*, p. 159.

² *Id.*

³ *Id.*, p. 160.

bank shares.” The other claim was answered in the same manner. The court added, that “it is not pretended, however, that this exemption is based upon the mere will of the legislature of the state. The courts of New York hold that they are not the proper subjects of taxation in the state of New York, because they have no *situs* within the territory for that purpose.”²

§ 400(c). **Newark Banking Company v. Newark.**³ The national banks in New Jersey claimed that the greater rate of taxation assessed against them was occasioned by exempting the shares of capital stock held by individuals in all private corporations of the state “except banking institutions, and except those which by virtue of any contract in their charters or other contracts with this state are expressly exempted from taxation, and except mutual life insurance specially taxed.” This claim was not favorably regarded by the United States Supreme Court for the reasons given in the *Mercantile Bank* case.

§ 401. **General corporations are not moneyed corporations.** If general corporations are favored the national banks cannot complain, because they are of a different character. On several occasions the complaint by the national banks of unfriendly discrimination has been declared to be unfounded, because the favored corporations were not moneyed corporations like themselves. Thus, it appeared that by the law of Montana territory shares in any bank or company were subject to taxation except that when the entire capital stock of any incorporated company was invested in assessable property in the territory, its stock was not taxable. In the case in question, shares of stock in corporations whose entire capital stock was invested in assessable property in the territory were not taxed, mining claims not patented were not assessed at all, and when patented were assessed at the government price of five dollars an acre without regard to their market value. There were a large number of mining corporations whose entire capital stock was invested in assessable property, and that part of such property consisted of mining claims. The defendant's shares were taxed at their market value. It was held that the taxation imposed on national bank shares was on a different kind of property than capital invested in mines,

¹ *Mercantile Bank v. New York*, p. 162.

² *Id.*, p. 162.

³ 121 U. S., 163.

and therefore no discrimination against the former existed which was forbidden by law.¹

§ 401(a). **In the case of the First National Bank v. Waters**² the institution sought to restrain the collection of the tax assessed against its shareholders on the ground that the state imposed one rule of assessment and taxation on shareholders in corporations, other than banking associations, and another on banks, whereby a higher taxation incidentally rested on national bank shareholders than on other shareholders. But the court decided that the laws of the state "for the taxation of general corporations and the exemption of their shares do not furnish the rule for the taxation of moneyed corporations, or of capital invested in private banking or of personal property generally," so the complainant did not succeed in restraining the collection of the tax.

§ 401(b). **Maguire v. Board of Revenue.**³ So in Alabama a statute provided that the capital stock of domestic corporations, except such portion as might be invested in other property and taxed in that form, should be taxed without reference to the tax which might be imposed on their shares. In taxing the shares of the national banks in the state the national law was not violated, because the domestic corporations were of a different nature, not having moneyed capital.

§ 402. **Five forms of unfriendly discriminations.** Having narrowed our inquiry to the taxing of "other moneyed capital" which is regarded in the section under consideration similar to national bank shares, an unfriendly discrimination in taxing them may be shown in one of five ways: (1) in the law whereby they are taxed at a higher rate than other moneyed capital; (2) in the illegal administration of a law taxing both kinds alike whereby national banks are subjected to a heavier rate; (3) the unfriendly discrimination may be shown in valuing national bank shares nearer to or higher above their true value than other bank shares; or (4) in the illegal administration of a law which provides for valuing both kinds of shares alike; or (5) by not permitting the same deductions to be made for debts or against national bank shares, as against other moneyed capital.

¹ Board of Commissioners v. Davis, 12 Pacific Rep., 686.

² 19 Blatchf., 242.

³ 71 Ala., 401.

§ 403. **A higher valuation is illegal.** No attempt has been made to tax national bank shares higher than other moneyed capital, but some of the state laws have authorized an unfriendly and illegal valuation of them. In defense of their conduct state officials have contended that if the rate of the tax was the same on both kinds of property¹ they were not amenable for valuing national bank shares higher than "other moneyed capital," or "at a greater rate." But this defense could not stand. Said Judge Harlan in *Boyer v. Boyer*:² "The words 'at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens' refer to the entire process of assessment, which, in the case of national bank shares, includes both their valuation and the rate of percentage on such valuation; consequently, that the act of Congress is violated if, in connection with a fixed percentage applicable to the valuation alike of national bank shares and of other moneyed investments or capital, the state law establishes or permits a mode of assessment by which such shares are valued higher in proportion to their real value than is other moneyed capital."³

§ 403(a). **So in the *People v. Weaver***⁴ it was contended that while Congress limited the state authorities in reference to the ratio or percentage levied on the value of national bank shares, which could not be greater than on other moneyed capital in the state, the relative valuation of the shares and of other moneyed capital was left wholly to the control of state regulation. But this contention failed. Says Miller, J., speaking for the United States Supreme Court: "The section to be construed begins by declaring that these shares may be included in the valuation of the personal property of the owner, in assessing taxes imposed

¹ In *Gorgas' Appeal*, 79 Pa., 149, it was held that the National Banking Act related only to the rate and did not prohibit the states from exempting subjects from taxation.

² 113 U. S., 689 p. 695.

³ *People v. Weaver*, 100 U. S., 539; *Pelton v. National Bank*, 101 Id., 143; *Cummings v. National Bank*, Id., 153; *Supervisors v. Stanley*, 105 Id., 305; *Evansville Bank v. Britton*, Id., 323. In *People v. Commissioners*, the court says "that the rate of taxation upon the shares should be the same or not greater than upon the moneyed capital of the individual citizen which is subject or liable to taxation. That is, no greater proportion or percentage of tax in the valuation of shares should be levied than upon other moneyed taxable capital in the hands of the citizens," 4 Wall., 256.

⁴ 100 U. S., 539 p. 545.

by authority of the state within which the association is located. This valuation, then, is part of the assessment of taxes. It is a necessary part of every assessment of taxes which is governed by a ratio or percentage. There can be no rate or percentage without a valuation. This taxation, says the act, shall not be at a greater rate than is assessed on other moneyed capital. What is it that shall be not greater? The answer is, taxation. In what respect shall it be not greater than the rate assessed upon other capital? We see that Congress had in its mind an assessment, a rate of assessment, and a valuation, and taking all these together the taxation on these shares was not to be greater than on other moneyed capital."

The principle therefore is clearly settled that a state statute which establishes a mode of assessing national bank shares at a higher valuation in proportion to their real value than other moneyed capital is in conflict with the national law, though no greater percentage is levied on that valuation than on the valuation of other moneyed capital.¹

§ 403(b). In **Davenport National Bank v. Board of Equalization** it was contended that the law discriminated against bank shares for the reason that the shares of saving banks were not taxable, but merely their paid-up capital, while national bank shares were; that the burdens of taxation cast on national banks under the statute could never be less than that cast on savings banks and might be more. Judge Adams, answering for the court said: "There is no pretense that the taxation is greater than is assessed upon some other moneyed capital, and in fact, upon moneyed capital generally. The appellant's position is that, if any moneyed capital is favored, national bank capital must be favored to the same extent. But in our opinion each state may, as a general proposition, provide for the assessment of savings bank capital, as well as other property, in such mode as it may deem most convenient and effective for the collection of its revenue; and so long as the legislature appears to have been influenced solely by such consideration, any slight advantage accruing as a mere incident to the mode of assessment should not be deemed a discrimination in rates, of such a character that national banks could properly claim that they should escape tax-

¹ *People ex rel. Williams v. Weaver*, 100 U. S., 539

ation, or be assessed by some mode different from that provided in the National Banking Act. If any advantage accrues to savings banks from the mode of assessment which has been provided, it appears to us to be a mere incident of the mode, and evincing no desire to favor savings bank capital." So the tax was declared valid.¹

§ 403(c). **City National Bank v. Paducah.**² On the contrary, in Kentucky the entire banking capital practically was subject to a tax of fifty cents per share of one hundred dollars in lieu of all other taxes. Among these was a state bank in Paducah whose capital was larger than that of all the national banks located in the city. The national banks there were assessed \$1.05 per share. This assessment, in view of the much smaller one assessed on the state banks, was regarded an unlawful discrimination against the national banks, and invalid.

§ 404. **Illegal administration of the law in valuing.** Passing now to the cases of the illegal administration of the law for valuing national bank shares and other moneyed capital, it has been held that when assessors deliberately determine, in deference to the popular will, not only to violate the statute authorizing the assessment, but the admonition of the courts, and adopt a different valuation, and assess national bank shares on a larger percentage than "other moneyed capital," the collection of the tax can be enjoined or prevented. "There can be no question of intention or design in such discrimination. In the very nature of it, arithmetically considered, there is discrimination in the operation; and no reasonable man can be heard to say that he did not intend to discriminate when he applies a larger per centum of violation in one case than another."³ * *

¹ 64 Iowa, 140 p. 142, aff'd 8 Sup. Ct. Rep., 73; Davenport National Bank v. Middlebuscher, 15 Fed. R., 225; Richards v. Incorporated Town, 31 Id., 505.

² 2 Flippin, 61. In this case Brown, J., said: "When by local legislation, different rates are prescribed for different classes of moneyed capital, the rate imposed upon shares in national banks should approximate as closely as may be to the rate imposed upon other moneyed capital of the same or similar class, viz., shares of state banks. While this rule might be subject to qualifications in localities where the capital of state banks bore a very small proportion to other moneyed capital, and the exemption was intended as a bounty, I think it furnishes, as a general rule, a safe guide to the validity of the tax."

³ First National Bank of Toledo v. Treasurer, 25 Fed. R., 749 p. 752.

"It is wholly immaterial upon what principal sum of value you make these respective calculations of percentages. If it be determined to assess all property at six-tenths of its 'true value,' or of its 'market value,' or by whatever name you designate it, and that value be reached in one case by taking the par or face value of shares in a bank, let us say, and in another by taking a value higher than the par value, because the shares will sell for more, and on one you calculate six-tenths, and on the other seven-tenths, the want of uniformity takes place, and results in a discrimination just as much as if the principal sums had been selected in exactly the same way. And it is no argument against the illegality of the discrimination to say that either of these principal sums was improperly taken as the basis of calculation, or that one was too large and the other too small, or that neither is just what it should have been. The vice does not consist of discrimination at that point, but beyond it,—at the point where the different modes of ascertaining the final taxable value are adopted."¹

§ 404(α). **So in *Pelton v. National Bank*,**² although the statutes of the state provided for valuing all moneyed capital for purposes of taxation at its true cash value including national bank shares, the systematic and intentional valuation of all other moneyed capital, by the taxing officers, far below its true value, while national bank shares were assessed at their full value, was a violation of the National Banking Law. On this occasion the taxing board, remarked Judge Miller, "increased the valuation of the shares of the [plaintiff bank] \$250,000 above the sum of \$912,000, at which it had been assessed by the county board, and it increased the valuation of the shares of all the national banks of Cleveland from the sum of \$3,236,500 to \$4,046,045. It is thus seen that the auditor and the city board of equalization valued these shares higher in proportion to other moneyed capital in Cleveland to an extent which * * may be supposed to be thirty per cent. as it is shown to be in comparison with real estate, and the state board added about one-fourth to that, so that the tax on the national bank shares, against which relief is sought in this suit, is between fifty and sixty per cent. on its real value greater than on other moneyed capital, and therefore to that extent forbidden by the act of Congress."

¹ Hammond, J., *First National Bank v. Treasurer*, 25 Fed. R., p. 752.

² 101 U. S., 143 p. 148.

§ 404(b). **Cummings v. National Bank.**¹ In another important case in the same state the assessors of real property, and of personal property, and the auditor of Lucas county, in which was the city of Toledo, concurred in establishing a rule of valuation by which real and personal property, except money, was assessed at one-third of its actual value, and money or invested capital at six-tenths of its value, while the shares of incorporated banks were returned by the state board of equalization, at their full value. This was such a glaring inequality that a federal court interposed and restrained the collection of the tax.

§ 405. **Honest mistake of judgment.** If, however, the unequal valuation be an honest mistake of judgment a court will not interfere. Thus in Ohio a national bank complained that its shares were valued too high compared with other property on the tax roll. The testimony revealed great inequalities in valuing real and personal property, including national bank shares, but as no assessor was governed by any other rule than his judgment of the true value of the property assessed no relief was granted.²

§ 406. **Rules governing deductions.** In permitting or refusing deductions or exemptions the rule is clear enough; the difficulty is to apply it correctly. It has been stated on many occasions; one of the most noteworthy is in the case of the *The People ex rel. Williams v. Weaver*.³ On that occasion it was declared that if a debtor is permitted by law to deduct the amount of his debts in valuing his personal property, including his moneyed capital, he should also be permitted to deduct them from his national bank shares. National bank shares are moneyed capital and must be included with it, to exclude them and permit no reduction for indebtedness therefrom, while it is permitted against other moneyed capital, produces an unequal and unjust valuation of such shares. So, in *Boyer v. Boyer*,⁴ Judge Harlan has said that "a state law which permits individual citizens to deduct their just debts from the valuation of their personal property of every kind, other than national bank shares, or which permits the taxpayer to deduct from the sum of his credits, money at interest or other demands to the extent of his *bona fide* indebtedness, leaving the remainder to be taxed, while it denies the same right of deduction from the

¹ 101 U. S., 153.

² *Exchange National Bank v. Miller*, 19 Fed. R., 372.

³ 100 U. S., 539.

⁴ 113 U. S., p. 695.

cash value of bank shares, operates to tax the latter at a greater rate than other moneyed capital.”¹

§ 407. **Two kinds of deductions, direct and indirect, from exemptions to other moneyed capital.** We shall review the cases in which unfriendly discriminations against national bank shareholders have been claimed from unfair deductions or exemptions of personal property. These may be divided into two kinds: (1) those which are direct or specifically authorized by law, for example, the deduction of one's personal indebtedness from the value of his shares; and (2) other deductions or exemptions granted from time to time, which have the effect to throw an unequal and unfair burden on the owners of national bank shares.

§ 408. **Intention of the law.** The exemptions that have occurred are so unlike each other that it is not easy to establish rules whereby national banks may know when to claim an exemption entirely or in part, and when not. Said Judge Harlan in *Boyer v. Boyer*:² “Capital invested in national bank shares was intended to be placed upon the same footing of substantial equality in respect of taxation by state authority as the state establishes for other moneyed capital in the hands of individual citizens, however invested, whether in state bank shares or otherwise. As the act of Congress does not fix a definite limit as to percentage of value, beyond which the states may not tax national bank shares, cases will arise in which it will be difficult to determine whether the exemption of a particular part of moneyed capital in individual hands is so serious or material as to infringe the rule of substantial equality.”

§ 409. **Substantial equality is required.** “As substantial equality is attainable and is required by the supreme law of the land, in respect of state taxation of national bank shares, when the inequality is so palpable as to show that the discrimination against capital invested in such shares is serious, the courts have no discretion but to interfere.”³

¹ *People v. Weaver*, 100 U. S., 539; *Pelton v. National Bank*, 101 Id., 143; *Cummings v. National Bank*, Id., 153; *Supervisors v. Stanley*, 105 Id., 305; *Evansville Bank v. Britton*, Id., 322; *People v. Dolan*, 36 N. Y., 59.

² 113 U. S., p. 702.

³ Harlan, J., *Boyer v. Boyer*, 113 U. S. 689 p. 701.

§ 409(a). **Boyer v. Boyer.**¹ In Pennsylvania a very large amount of property which, in 1844, was subjected to general taxation, was afterward relieved from the burden of county taxation. The property thus favored included "all bonds or certificates of loan issued by any railroad company incorporated by the state; * * shares of stock in the hands of stockholders of any institution or company of the state which, in its corporate capacity, is liable to pay a tax into the State Treasury;

* * mortgages, judgments and recognizances of every kind; * * moneys due or owing upon articles of agreement for the sale of real estate; * * all loans however made by corporations which are taxable for state purposes when such corporations pay into the State Treasury the required tax on such indebtedness." National bank shares were subjected to the heavier burden imposed by the law of 1844. The court declared that it seemed difficult to avoid the conclusion that, in respect of county taxation of national bank shares, there had been, and was, "such a discrimination in favor of other moneyed capital against capital invested in such shares as is not consistent with the legislation of Congress. The exemptions in favor of other moneyed capital appear to be of such a substantial character in amount as to take the present case out of the operation of the rule that it is not absolute equality that is contemplated by the act of Congress."

§ 410. **Cases in which deductions were properly refused.** In the following cases the courts have decided that national bank shares were properly taxed, either because the deduction required by law was made, or that such a requirement did not exist.

§ 410(a). **First National Bank v. Township.** Thus in Michigan the statute provided that the credits of all persons should be taxed in excess of their debts. This was declared to be in harmony with the National Banking Law even though individuals were taxed for the full value of their bank shares without deducting their indebtedness. Said Campbell, J.: "We cannot perceive any conflict with the act of Congress in applying to national banks the same rules which we apply to all other personal property, merely because in taxing credits we tax the bal-

¹ 113 U. S., 689 pp. 699, 701, revsg 103 Pa., 387.

ances and not the whole credits. Our legislature has put all capital on the same footing.”¹

§ 410 (b). In the *Mercantile Bank* case² the banks claimed that other moneyed capital was exempted to such an extent that they bore an unjust share of the burden of the tax levied in the state. But, as we have seen, the United States Supreme Court decided that the capital of corporations to which a different rule of taxation was applied than to national bank shares, including trust companies and savings banks, was not moneyed capital in the sense in which these words are used in this section.

§ 410 (c). *Peavey v. Town of Greenfield*.³ In New Hampshire the excess only of the par value of national bank shares over the amount of the owner's interest-bearing indebtedness is liable to taxation. In the case involving this question P “returned for taxation his shares of national bank stock, less the amount of his interest-bearing indebtedness. The selectmen refused to deduct the indebtedness and assessed taxes upon the full amount of the bank stock. ‘Money on hand, or at interest, more than the owner pays interest for,’ being a statutory limit of the taxation of such moneyed capital, and shares of national banks not being taxable ‘at a greater rate than is assessed upon other moneyed capital,’ the plaintiff's return was correct.”

§ 410 (d). *McVeagh v. City of Chicago*.⁴ In Illinois, after the United States Supreme Court had decided that a tax could not be laid on the capital of national banks, a new system was devised of taxing national bank shareholders. By this a deduction was made of the real estate owned by national banks, but their shareholders were not permitted to deduct their debts from the valuation of their shares. Nevertheless, the system was declared to be valid.

§ 410 (e). *Rosenburg v. Weekes*.⁵ In Texas a statute provides for assessing national bank shares at their actual value, and in ascertaining this, the liabilities of the bank are deducted from its credits. The shareholders, therefore, are given the benefit of the bank's indebtedness. If a shareholder should complain that his individual debts must also be deducted, he must show

¹ 46 Mich., 526 p. 531.

² 121 U. S., 138.

³ 9 At. Rep., 722, the court citing *Evansville Bank v. Britton*, 105 U. S., 322; *Pelton v. National Bank*, 101 U. S., 143; *Weston v. Manchester*, 62 N. H.—

⁴ 49 Ill., 318.

⁵ 4 S. W. Rep., 899.

that he owes them, otherwise he can get no relief. By these laws, says Willie, C. J., "having assessed the same percentage of taxation against every description of property, excepting a few articles exempted from public policy, and having provided means for a just and fair assessment of all moneyed capital so as to obtain as near as possible an equal rate of taxation upon all, have complied, as far as possible, with the true intent of the Act of Congress."

§ 410 (f). **Maguire v. Board of Revenue.**¹ Until 1880 Alabama did not authorize the assessment and collection of a tax on national bank shares. The December Act of that year provides "that there shall be levied and collected on the value of each share of every national banking association located within this state, whether held by residents or non-residents, the same rate of taxation as is levied on other moneyed capital, the same to be levied and collected in the county where each such association is located, and not elsewhere, and to be paid by each such association for the shareholders thereof." This is not a violation of the restriction contained in the national law permitting the states to tax these associations, considered by itself, or in connection with another state law which provides only for the taxation of the excess of all money loaned and solvent credits or credits of value after deducting the taxpayer's indebtedness. For this latter provision authorizes a deduction by the shareholder of his debts from the value of the shares owned by him, as can be done in the taxation of money loaned.¹

§ 410(g). **McAden v. Commissioners.**² In North Carolina a statute³ enumerates the several kinds of solvent credits and provides that the person taxed "may deduct from the amount of solvent credits owing to him the amount of collectible debts owing by him as principal debtor." It was decided that the holder of shares of a national bank which was located in the state, could deduct his indebtedness from the valuation of his shares, although these were not included in the list of "solvent credits" enumerated in the statute.

§ 411. **Cases in which deductions should have been made. Ruggles v. City of Fond du Lac.**⁴ We will now review the cases in which deductions were not made as the law

¹ 71 Ala., 401.

² 2 S. E. Rep., 670.

³ Act 1885, Ch. 177 (12)

⁴ 53 Wis., 436 p. 439.

required. In Wisconsin a statute exempts from taxation "so much of the debts due, or to become due, to any person as shall equal the amount of *bona fide* and unconditional debts by him owing."¹ So long, therefore, as this statute "exempts, for the purposes of valuation, assessment, and taxation, from the credits of an individual an amount equal to his *bona fide* and unconditional indebtedness, the same exemption must be made from the ascertained value of national bank stock, if the owner thereof owns *bona fide* and unconditional debts."

§ 411(a). **Pollard v. State.**² An Alabama statute which authorizes a taxpayer to deduct his indebtedness from the amount of "money loaned, and solvent credits, or credits of value," taxing only the excess, and exempts from taxation the "capital stock of incorporated companies created under any law of the state, * * * such portion thereof as may be invested in property and taxed otherwise as property," and limits municipal taxation on such corporations,³ is an unfavorable discrimination against national bank shareholders, and therefore a violation of the national law.

§ 411(b). **Miller v. Heilbron.**⁴ In California an assessment was declared invalid because the assessor could not, under the law, deduct from the valuation of national bank shares the debts due from their owner to citizens of the state, while he could deduct from credits all debts due by the person assessed to *bona fide* residents of the state. This was held to be "a discrimination against the owner of national bank shares and in favor of the owner of credits. The former is assessed at a greater rate than the latter."

§ 411(c). **Supervisors v. Stanley.**⁵ In 1866 the New York legislature enacted that "no tax shall hereafter be assessed upon the capital of any bank or banking association organized under the authority of this state or of the United States, but the stockholders in such banks and banking associations shall be assessed and taxed on the value of their shares of stock therein; said shares shall be included in the valuation of the personal property of such stockholder in the assessment of taxes at the

¹ Rev. Stat., Sec. 1038.

² 65 Ala., 628, overruling *McIver v. Robinson*, 53 Id., 456; *Sumter County v. National Bank*, 62 Id., 464.

³ Code, § 362, subd 8, 10.

⁴ 58 Cal., 133.

⁵ 105 U. S., 305, revsg 15 Fed. R., 483.

place, town, or ward where such bank or banking association is located, and not elsewhere; whether the said stockholder reside in said place, town, or ward, or not, but not at a greater rate than is assessed upon other moneyed capital in the hands of individuals in this state. And in making such assessment there shall also be deducted from the value of such shares such sum as is in the same proportion to such value as is the assessed value of the real estate of the bank or banking association, and in which any portion of their capital is invested in which said shares are held to the whole amount of the capital stock of said bank or banking association. *And provided further*, That nothing herein contained shall be held or construed to exempt from taxation the real estate held or owned by such bank or banking association; but the same shall be subject to state, county, municipal, and other taxation to the same extent and rate and in the same manner as other real estate is taxed.”¹ This law was declared invalid so far as it did not permit a national bank shareholder to deduct the amount of his just debts from the assessed value of his shares while the owner of all other personal property was permitted to make such a deduction.

§ 411(d). **Evansville Bank v. Britton.**² The principles announced in the Stanley case were approved in another which involved the construction of an Indiana statute. In its schedule the subjects of taxation, from which the taxpayer might deduct his *bona fide* indebtedness, was placed under the following heads:

“1st. Credits or money at interest, either within or without the state at par value.

2d. All other demands against persons or bodies corporate, either within or without the state.

Total amount of all credits.”

In construing this statute Mr. Justice Miller said: “The act of Congress does not make the tax on personal property the measure of the tax on bank shares in the state, but the tax on moneyed capital in the hands of the individual citizens. Credits, money loaned at interest, and demands against persons or corporations are more purely representative of moneyed capital than personal property, so far as they can be said to differ. Undoubtedly there may be much personal property exempt from taxation without giving bank shares a right to similar exemption, because personal property is not nec-

¹ Ch. 761, Sec. 1.

² 105 U. S., 322.

essarily moneyed capital. But the rights, credits, demands, and money at interest mentioned in the Indiana statute, from which *bona fide* debts may be deducted, all mean moneyed capital invested in that way."

§ 412. **If shareholder has no debts no equality arises.** If, however, the national bank shareholder has no debts to deduct the prescribed mode of assessment is valid; but if he has debts an assessment which excludes them from computation is voidable, that is, the shareholder need not pay the tax assessed unless he chooses to do so.¹

§ 413. **Assessment valid until deduction for debts is demanded.** As the statute is not void in consequence of the conflict between it and the National Law, the assessing officers act within their authority in making an assessment until they are duly notified that a national bank shareholder who was assessed demands a deduction of his debts.² If they proceed after such notice in violation of the National Law, he may take action to secure the deduction, and when this is done the remainder of the statute is valid.³ Such action may be taken by a bank on behalf of its stockholders, and the proper way is by an injunction.⁴ If a national bank shareholder should present to the proper board of assessors his affidavit, showing that his personal property subject to taxation including his bank shares after deducting therefrom his just debts, was of no value, and they should refuse on his demand to reduce the assessment of the shares, they can be restrained by an injunction from collecting the tax.⁵ Moreover, in such a suit a bank or shareholder may show what deduction ought to be made for shareholder debts.⁶

§ 414. **Deduction of valuation of real estate.** Having considered what deductions must be made for debts, we shall next consider how the real estate owned by banks has been treated by the states in valuing national bank shares. The National Banking Law authorizes the assessment of this against the banks for "state, county, or municipal taxes, to the same extent, according to its value, as other real property." And we may begin by remarking that in Alabama it has been decided

¹ Supervisors v. Stanley, 105 U. S., 305.

² Id.

³ Id.

⁴ Hills v. Exchange Bank, Id., 319, revsg 18 Blatchf., 478.

⁵ Id.

⁶ Id.

that the Act of December, 1880, which provided for levying and collecting on every national bank share the same tax as was levied and collected on other moneyed capital was valid, even though no deduction was allowed the shareholders for the taxes paid by the bank on real estate owned by it and assessed for taxation.¹

But the United States Circuit Court has maintained a different opinion. In the case of the City National Bank *v.* Paducah,² a law was declared invalid for the reason that it contained no provision for deducting the value of the real estate owned by the bank from the aggregate value of the shares. "Without such provision, a double tax is paid upon the value of the real estate from which other moneyed capital is exempt."

§ 414(a). **New York cases.** In 1866 the New York legislature enacted a law for assessing national bank shares. In assessing them the assessors were required to deduct from the actual value of each share a sum bearing the same proportion thereto as the assessed value of the real estate of the bank bore to the actual value of the capital stock. The words "whole amount of the capital stock" used in the statute referred to its value, and not to the nominal amount of capital.³ Thus, in the *Tradesmen's National Bank* case⁴ its capital was \$1,000,000. This was represented by twenty-five thousand shares of forty dollars each, which were assessed at fifty-six dollars. The aggregate assessment therefore was \$1,400,000 and the real estate was assessed at \$200,000. It was decided that the assessors must deduct eight dollars from each share—one-seventh, or the proportion which the real estate bore to the aggregate assessed value of the shares.

§ 414 (b). **Bank building on leased lot.** A bank held a lot in New York city under a lease which contained a provision giving the lessor an option at the expiration of the lease to pay for a building erected on the lot by the lessee, or to renew the lease for a further term, and, if thus renewed, the lessee had the right at the expiration of the term to remove the building. The building was erected by the bank and cost \$65,000, and the capital of the bank to this amount was invested therein. The property was assessed to the bank as real estate at \$70,000. The tax commissioners, however, in assessing the shareholders, refused to

¹ *Maguire v. Board of Revenue*, 71 Ala., 401.

² 2 Flippin, 61.

³ *People v. Commissioners*; 69 N. Y., 91, revsg 9 Hun, 650.

⁴ *Id.*

deduct anything from the assessed value of the shares notwithstanding this investment. Their action was erroneous, the court holding that the assessed value of the building should have been deducted. But the court could not determine that "the lot was assessed at only \$5,000 and the building for \$65,000.. The deduction should be made of such an amount as the building is assessed at in connection with the lot, and this can only be determined by the officers making the investment."¹

§ 414 (c). **When building cannot be taxed.** In Pennsylvania if a bank pays a state tax on the par value of its shares, a building which it may own, that is used for banking, cannot be taxed for county purposes, although the cashier occupies a part of it as a residence.² So, too, in Minnesota, if national bank shares are taxed at their actual value without a reduction for real estate, the office and lot of the bank itself cannot be taxed.³

§ 414 (d). **Kentucky case.** The city of Covington, Kentucky, assessed a tax for municipal purposes on the surplus fund and undivided profits, the real estate and improvement used as a banking house, and also the real estate bought at judicial sales for the purpose of recovering an indebtedness to a national bank, and its office furniture. A statute of the state imposed an annual tax of fifty cents on each national bank share, which was "equal to \$100, or on each \$100 of stock therein owned by individuals, corporations, or societies." A similar tax was imposed on state banks and other moneyed corporations. These were assessed on their corporate property, and shareholders were exempted from listing their shares in them. As the state courts had decided that the corporate property of state banks was not taxable beyond fifty cents per share of \$100, so did a federal court decide that this rule must be applied to the taxation of national banks, and therefore the real estate and furniture of the national bank in question must be exempted from municipal taxation.⁴

¹ *The People v. Commissioners*, 80 N. Y., 573; See *People v. Commissioners*, 52 N. Y., 659.

² *County of Lancaster v. Lancaster County Nat. Bank*, 7 Week. Notes, 29.

³ *Board of County Commissioners v. Citizens' National Bank*, 23 Minn., 280.

⁴ *Covington City Nat. Bank v. City of Covington*, 21 Fed R., 484; *Farmers' Bank v. Commonwealth*, 6 Bush, 127; *Johnson v. Commonwealth*, 7 Dana, 338; *Trustees v. Deposit Bank*, 12 Bush, 538; *Commonwealth v. First National Bank*, 4 Bush, 98; *Louisville & Nashville R. v. Commonwealth*, 1 Bush, 250.

A national bank was assessed on both its shares of stock and real estate, nor was the value of the latter deducted from that of the shares. Nevertheless, as the valuation of both shares and real estate was less than half their real value the court decided that no injustice had been done. Others had been assessed too low, while the the shareholders in this bank were "not yet assessed as high as they should be."¹

In Texas, under the statute of that state, the real estate of national banks is not subject to taxation.²

§ 415. **Deduction presumed to have been made.** In the absence of proof to the contrary the law will presume that the assessors have deducted the value of the real estate of a bank from the value of its shares, and the affidavit of the assessors attached to the roll stating that it contains a true statement of the taxable personal estate "at the full and true value thereof" is not evidence that the deduction was not made.³

§ 416. **Deduction of national securities. Bank notes.** The exemption or deduction of national securities from taxation is not an unfriendly discrimination for the law requires this to be done. "All stocks, bonds, treasury notes, and other obligations of the United States, shall be exempt from taxation by or under state or municipal or local authority," is the language of the law.⁴ Whether national bank notes are also exempt has not been decided by the highest judicial tribunal. In Indiana they are not exempt from state taxation.⁵ In Mississippi they are.⁶ In *Ruffin v. Board of Commissioners* ⁷ Reade, J., says: "It seems that all that is to be inferred from the decision in *Veazie Bank v. Fenno* ⁸ is not that national bank bills are exempt, but that Congress has the power to exempt them from state taxation."

§ 416(a). **National Bank v. Commonwealth.**⁹ But government securities are exempted. In the above-mentioned case it was held that neither could the capital of a bank which was invested in government securities be taxed, nor could the bank itself as the owner of them.

¹ *Nickerson v. Kimball*, 1 Chic. L. J., 42.

² *Rosenburg v. Weekes*, 4 S. W. Rep., 899.

³ *Matter of the Farmers' National Bank*, 1 Th. & C., 383.

⁴ Rev. Stat., Sec. 3701.

⁵ *Board of Commissioners v. Elston*, 32 Ind., 27.

⁶ *Horne v. Green*, 52 Miss., 452.

⁷ 69 N. Car., 493.

⁸ 8 Wall., 533.

⁹ 9 Wall., 353.

§ 417. **No deduction of value of national bank securities from value of shares.** But a national bank shareholder cannot claim that the value of the bank's national securities should be deducted from the valuation of its shares. This claim was made by a shareholder in New York during the early administration of the law. But the court answered that "the meaning and intent of the lawmakers were that the rate of taxing the shares should be the same, or not greater, than upon the moneyed capital of the individual citizen which is subject or liable to taxation. That is, no greater proportion or percentage of tax in the valuation of the shares should be levied than upon other moneyed taxable capital in the hands of the citizens."¹

§ 417(a). **Exchange National Bank v. Miller.**² A bank complained that its assets consisted in part of United States bonds, which were not subject to taxation, but which were included in the valuation made by the auditor and placed in the duplicate. The court held that the elimination from the returns of unincorporated banks and individual bankers of the United States bonds was not a discrimination in their favor as against national bank shareholders, whose shares were valued for taxation without deducting such securities. Said Sage, J.: "In the case of an unincorporated bank, or of an individual banker in Ohio, the state levies its taxes upon every dollar's worth of property which it has power to tax, at the same rate and by the same method as in the taxation on national bank shares, leaving untouched only the property which it has not power to tax."

§ 418. **When they cannot be deducted from capital of state bank.** A state bank which had over four millions of assets—one item consisting of \$200,000 of real estate and another of about \$1,000,000 of legal tender notes—was assessed in addition to its real estate for the sum of \$700,000 as its capital or money at interest. The bank refused to pay on the ground that its capital, which was not invested in real estate, consisted of legal tender notes that were not taxable. Its nominal capital was, in truth, one million dollars, but the court declared that the tax was lawfully levied, Bradley J., saying that "it is to be presumed that its original capital, not invested in real estate, had been loaned out to its customers, and was rather

¹ *People v. The Commissioners*, 4 Wall., 244 p. 256.

² 19 Fed. R., 372 p. 380.

represented by its discounted bills than by the cash in its drawer." Again, he asked: "Does it lie with the bank to put its finger on a particular item of the assets—its money on hand, for example (which appears to have consisted of legal tenders)—and say that this item, and no other item, constituted its capital at that time? * * It is difficult to see how any proof could have been offered to show that the cash exclusively constituted the capital."¹

§ 418(a). **When they can be.** In another case a banker's capital consisted of \$50,000, one-half of which was composed of United States bonds, and one-fifth, or \$10,000, of treasury notes, beside \$2,000 of real estate. The board for equalizing taxes deducted the bonds and notes from his assessment, and were sustained by the court in their action.²

§ 419. **Deduction of state bonds.** The exemption of money invested in state bonds from taxation is not an unfriendly discrimination against national bank shares. Said the Supreme Court of Alabama: "We feel fully justified in concluding that there was no intention on the part of Congress to require the taxation of state bonds. The purpose of the law is accomplished when the states conform, as far as practicable, their revenue system to its requirements substantially; and it must not be construed to intend that any state shall do what the general government has itself declined to do, as unsanctioned by the immemorial custom of good faith, financial integrity and public honesty."³

§ 420. **Deduction under charter older than national bank act.** Nor is the continued exemption of property which had been exempted before the creation of the national banks an unfriendly discrimination against them. To tax a corporation that had been exempted would be a plain violation of a contract, and no law demands the violation of another. This principle was applied in *Indiana*. The state bank and branches were exempted from taxation by its charter which was granted in 1855. Not-

¹ *Canal & Banking Co. v. New Orleans*, 99 U. S., 97, affg 29 La. Ann., 851.

² *Campbell v. City of Centreville*, 69 Iowa, 439.

³ *Pollard v. State*, 65 Ala., p. 634; *McLaughlin v. Chadwell*, 7 Heisk, 389; see *Lionberger v. Rouse*, 9 Wall., 468; *Hepburn v. School Directors*, 23 Wall., 480; *Adams v. Nashville*, 95 U. S., 19; *People v. Weaver*, 100 U. S., 539; *Everitt's Appeal*, 71 Pa., 216.

withstanding their exemption the shares of national banks were taxed.¹

§ 421. **When deduction from municipal taxation does not produce inequality.** Nor will the exemption from "taxation except for state purposes, in the borough of a state, of all mortgages, judgments, recognizances and moneys owing upon articles of agreement for the sale of real estate," justify the shareholders of a national bank in that borough from withholding the payment of municipal or school taxes assessed on their shares.² And in Pennsylvania the judge of a lower court, whose opinion was approved by the higher, said: "It was not intended that if a state excepted some particular items of moneyed capital from taxation, leaving every other imaginable sort and kind subject to taxation under the general laws taxing moneyed capital, that the shares of national banks should come within the exception and not within the general rule."³

§ 422. **Deduction of surplus funds.** No deduction of the surplus fund, which a bank is required to accumulate, need be made in valuing its shares.⁴ In the *First National Bank v. Peterborough*,⁵ Judge Smith said: "The accumulation of a surplus in excess of the amount required by statute is a voluntary matter on the part of the bank. * * Being then a matter wholly outside the requirements of the statute, and in no way impairing or defeating the object of establishing such agencies of the national government, but having, on the contrary, rather the opposite effect, and the surplus being the exclusive property of the bank, subject to its unrestricted control, I see no reason why the State, in the exercise of a power which it never surrendered to the national government, to wit, that of taxing the polls and estates within its limits, cannot provide for the taxation of the surplus earnings of the national banks located within its borders to the extent above named. It is only doing directly what it has undoubtedly the right to do indirectly * * if it

¹ *City of Richmond v. Scott*, 48 Ind., 568; *Stilz v. Tutewiler*, Id., 600; see *Lionberger v. Rouse*, 9 Wall., 468.

² *Hepburn v. School Directors*, 23 Wall., 480, affg 79 Pa., 159.

³ *Gorgas' Appeal*, 79 Pa., 149 p. 151.

⁴ *Strafford National Bank v. Dover*, 58 N. H., 316; *First National Bank v. Peterborough*, 56 N. H., 38; *National Bank v. Commonwealth*, 9 Wall., 353; *People v. Commissioners*, 67 N. Y., 516, affd 94 U. S., 415.

⁵ 56 N. H., p. 41.

should see fit to enact that the shares of such banks should be taxed at their market instead of at their par value." ¹

Nor can a tax assessed against a national bank for "money on hand, at interest, or on deposit," be abated because the words "surplus capital," used in the statute, were not employed by the assessors. ²

§ 423. Where shares of residents must be assessed.

With respect to the place where national bank shares shall be assessed "the legislature of each state may determine and direct the manner and place of taxing all the shares of national banking associations located within the state, subject only to [two restrictions, one of which is] that the shares of any national banking association owned by non-residents of any state shall be taxed in the city or town where the bank is located, and not elsewhere." The taxing of them "in the city or town where the bank is located, and not elsewhere," means the state where the bank is located. ³ A statute, therefore, which enacted that national bank shareholders should be taxed in the county, town, or district within the state where the bank was located, whether they resided in the town, county or district or not, but not at a greater rate than the assessment on other moneyed capital belonging to individuals in the state, was valid. ⁴ Said Chase, C. J., in *Tappan v. Merchants' National Bank*, ⁵ "Shares of stock in national banks are personal property. They are made so in express terms by the act of Congress under which such banks are organized. * * Every owner takes the property subject to this power of taxation under state authority, and every non-resident, by becoming an owner, voluntarily submits himself to the jurisdiction of the state in which the bank is established for all the purposes of taxation on account of his ownership. This money invested in the shares is withdrawn from taxation under the authority of the state in which he resides and submitted to the taxing power of the state

¹ See *Covington City Nat. Bank v. City of Covington*, 21 Fed. R., 484. "The shares of a national bank are taxable at their value, which is the value of the whole capital, including the reserve and other surplus, whether invested in United States bonds or not," Doe, C. J., *First National Bank v. Concord*, 59 N. H., p. 77.

² *First National Bank v. Concord*, 59 N. H., 75.

³ *People v. Moore*, 1 Idaho, 504.

⁴ *Tappan v. Merchants' National Bank*, 19 Wall., 490.

⁵ *Id.*, p. 499.

where, in contemplation of the law, his investment is located. The state, therefore, within which a national bank is situated has jurisdiction, for the purposes of taxation, of all the shareholders of the bank, both resident and non-resident, and of all its shares, and may legislate accordingly.”¹

In North Carolina national bank shares owned by residents “may be assessed under the act of Congress, either at the place where such owners reside or at the place where the bank is located, as the legislature of a state may elect; and that under existing laws such shares must be taxed, and can be taxed only at the place where the owner or person who is required to test them resides.”²

§ 423 (a). **Austin v. Aldermen.** In Massachusetts a statute required the assessors of each city and town in which any national bank shareholder resided to include his shares in his assessment. A resided in Boston and owned shares in several of the national banks in the city and was assessed on them. He refused to pay because the statute was in violation of the National Law which permitted states to tax them “at the place where such bank is located and not elsewhere.” It was decided that the assessment was in conformity to the National Law, and that he had no cause for complaint.³

§ 423(b). **McMahon v. Palmer.**⁴ In New York the legislature enacted that bank “shares shall be included in the valuation of the personal property of such stockholders in the assessment of taxes at the place, city, town or ward where such bank, banking association or trust company is located and not elsewhere, whether the stockholder resides in said place, city, town or ward or not.”⁵ And another law provides for the assessment

¹ First National Bank v. Smith, 65 Ill., 44; Curtis v. Ward, 58 Mo., 295; Strong v. O'Donnell, 31 Leg. Int., 269. “The states have the power to tax the stock of any national banking association in such manner and at such places as their legislatures may direct, subject to the restrictions” mentioned in the section under consideration, Runyon, Ch., State, North Ward National Bank v. Newark, 40 N. J. Law, p. 561. Contrary authority, Union National Bank v. City of Chicago, 3 Biss., 82.

² Smith, C. J., Buie v. Commissioners, 79 N. Car. 267.

³ Austin v. The Aldermen, 7 Wall., 694, affg 14 Allen, 359; Clapp v. City of Burlington, 42 Vt., 579.

⁴ 102 N. Y. 176, affg 11 Daly, 214.

⁵ Laws of 1880, Ch. 596, Sec. 3.

of personal property in the city of New York upon separate rolls from that of real estate.¹ "It must follow," says Ruger, C. J., "as the necessary consequence of these requirements when the individual assessed does not live in the same ward in which the bank is located wherein he owns shares, and does not own real estate therein, that his assessment for bank shares must be made upon lists especially prepared for that purpose, in the ward where it is located, or the property must altogether escape assessment and taxation."² But these requirements are not contrary to [section 5219 of] the Revised Statutes. "That section provides that nothing contained in that act shall prevent the shares owned by an individual in a national bank from being included in the valuation of his personal property in assessing taxes imposed by the authority of the state in which the bank is located. The mere ministerial act of the officers in estimating and noting the result of the judicial determination, as to the liability of the individual, and the value and assessability of his personal property, provided such act does not produce an inequality of assessment, are not affected by the provisions of the section."³

§ 423 (c). **New Jersey case.** In New Jersey the shares of a national bank were taxed to the bank itself although some of its shareholders resided in the state. The statute provided that every person should be assessed in the township or ward where he resided. It was decided that the assessment must be made against the shareholders. Said the Chancellor: "Every stockholder resident here is to be assessed for his shares in the township or ward where he resides. * * It is enough to say that it is right, under the law, to have the assessment of tax upon his property, held in his own name, made against himself, and it cannot lawfully be made against any one else."⁴

§ 423 (d). **Michigan case.** In Michigan a statute provided for taxing national bank shares in the township where the bank was located, but if a shareholder resided in another township in the same county his shares should be taxed there. A village charter authorized the taxation of "all property, real and personal, within the limits of said village." This did not au-

¹ Laws of 1867, Ch. 410, Secs. 4, 5.

² *McMahon v. Palmer*, 102 N. Y., p. 183.

³ *Id.*, p. 184.

⁴ *State, North Ward Nat. Bank v. Newark*, 40 N. J. Law, 561, revsg 39 N. J. Law, 380.

thorize a tax on national bank shares of a bank located there which were owned by a resident of another township in the same county.¹

§ 424. **What may be required of shareholders concerning residence.** The states may require national bank shareholders to give notice to their respective institutions every year of their residence, and tax them if they neglect to do so where their banks are located, as well as where they themselves reside. In Massachusetts, where such a law existed, it was decided that a shareholder was rightfully taxed on his shares in the town where he resided, although he had through an honest mistake notified the cashier that his residence was in another town.²

§ 425. **Bank not taxable in another state.** A bank does not become taxable in another state by opening an office there to receive deposits for the convenience of customers. Thus a New Jersey national bank for the convenience of persons in Philadelphia kept a clerk in that city to receive deposits. By so doing the bank did not become liable to taxation in Philadelphia.³

§ 426. **Taxation of non-residents.** In taxing non-residents by the constitution of North Carolina, which requires the taxation of all property not specifically exempt, assessors must tax national bank shares belonging to non-residents, whether named or not, in the city or town where the bank is located, although there is no state statute expressly authorizing such taxation.⁴ So in Maine, W, a non-resident of Bangor, was duly assessed on the shares he owned in a national bank of that city. After legally demanding the tax, which he refused to pay, he was arrested by the sheriff of the county for the tax, which he then paid under protest to the officer, who, in turn, paid to the city treasurer. In an action to recover the money it was held that the tax could be collected under the general law of the state.⁵

§ 426 (a). **Provident Institution v. City of Boston.**⁶ In Massachusetts the legislature enacted in June, 1868, that the shares in national banks owned by non-residents of the state

¹ Howell v. Village of Cassopolis, 35 Mich., 471.

² Goldsbury v. Inhabitants of Warwick, 112 Mass., 384.

³ National State Bank v. Pierce, 18 Alb. L. Jour., 16.

⁴ Kyle v. Mayor, 75 N. Car., 445; Kyle v. Mayor, Id., 449.

⁵ Weld v. City of Bangor, 59 Me., 416.

⁶ 101 Mass., 575.

should be assessed to the owners in the cities or towns where the banks were located, that the rate of taxation should be the same as on other moneyed capital; that the value of such shares should be omitted from the valuation upon which the rate was to be based and that the Act should "apply to taxes assessed and collected for the present year in the same manner and to the same effect as if it had been in force on the first day of May." This was held to be no violation of the act of Congress, nor authorizing the levy of a tax in a disproportional manner, nor retrospective in its operation.

§ 426(b). **Moore v. Mayor.**¹ A North Carolina statute empowering the authorities of a town to impose the same taxes for municipal purposes on all persons whose ordinary avocations are pursued within the corporate limits of the town, as on the inhabitants, with a proviso that non-residents thus taxed should have the right to vote at municipal elections, is not set aside by a change in the state constitution which deprives the non-resident tax-payer of his vote, and authorizes a tax on the shares in a national bank located in the town and held by one who conducts his ordinary business therein but whose residence is in the county outside the corporate limits.

§ 427. **Cannot tax shares of bank in another state.** A state cannot tax national bank shares of a bank in another state which are owned by a non-resident.²

§ 428. **Shares may be assessed at market value.** The shares of national banks may be assessed at their market value even if this exceeds their par value. It was contended when this question arose that the term "moneyed capital" in the statute signified money at interest, and that as such capital is not taxed on more than its par or nominal value, the par value of national bank shares was their maximum value for taxation. The answer of the court was that "money invested in a bank is not money put out at interest. The money of the bank is so put out."³

¹ 80 N. Car., 154.

² *Flint v. Board of Aldermen*, 99 Mass., 141; *Austin v. Board of Aldermen*, 14 Allen, 359, *affd* 7 Wall., 694.

³ *Hepburn v. School Directors*, 23 Wall., 480; *People v. Commissioners*, 94 U. S., 415, *affg* 67 N. Y. 516, which *affd* 8 Hun, 536. Contrary authority, *Union National Bank v. City of Chicago*, 3 Biss., 82.

§ 428(a). **Hepburn v. School Directors.**¹ The Pennsylvania legislature in March, 1870, enacted that national bank shares "shall be taxable for county, school, municipal and local purposes, at the same rate as now is or may hereafter be assessed and imposed upon other moneyed capital in the hands of individual citizens of the state." Under this statute national bank shares may be valued above their par value in county, school, municipal and local taxation.²

§ 429. **Taxation of omitted shares.** If a particular kind of property has been omitted from taxation for a year the legislature has power to enact a law to cure the omission. So, if a tax on national bank shares has not been equally assessed for a year in consequence of a defective law under which this was done, the legislature has power to enact a law to cure the defect. Said Breeze, C. J., in such a case: "It is admitted, taxation of a property owner should be by the operation of a general law affecting all classes of people, but where a particular species of property has been omitted from the taxation for a given year, where is the inhibition upon the legislature to pass a special law to cure the omission? Such is the nature of the law in question. The tax on bank shares was not properly assessed; they were not, in fact, assessed by reason of the defective law under which it was attempted. This act was designed only to supply that omission, and we must give it effect, not being convinced of the want of constitutional power in the legislature to enact it."³ But in Alabama a Statute which was enacted in December, 1880, taxing the shares of national banking associations for any preceding year since 1874 "the same rate of taxation, state and county, as was in each year assessed and collected upon other moneyed capital," was a violation of the constitution of that state which limited the rate of taxation in any one year for state and county purposes.⁴

§ 429 (a). **New York cases.** The assessors of the county of Albany omitted to put the names of several stockholders of the National Albany Exchange Bank on the assessment roll, and this omission invalidated the tax,⁵ "because," in the language of

¹ 23 Wall., 480.

² Id.

³ *McVeagh v. City of Chicago*, 49 Ill., 318 p. 322.

⁴ *Maguire v. Board of Revenue*, 71 Ala., 401.

⁵ *Albany City National Bank v. Maher*, 6 Fed. R., 417.

Wallace, J., "the requirement which was disregarded by the assessors was designed to afford taxpayers an opportunity for the examination and revision of their assessments, and therefore should not be deemed directory merely, but essential, and a condition precedent to the validity of the tax."¹ The legislature then sought to cure the proceedings by enacting that the amounts of all assessments attempted to be levied and taxes imposed on the shareholders in national and state banks in the city of Albany during the year 1880 should be assessed and levied on them, and fifteen days were given after the Act became a law to review the assessment on the ground of inequality.² This Act was declared void "because it was in effect a legislative assessment of a tax upon a body of individuals without apportionment or equality as between them and the general body of the taxpayers."³ A second Act, therefore, was passed in 1883 to validate the assessments made during the years 1876, '77 and '78. The second Act was "carefully framed to obviate the objections which were fatal to the former act," and the only objection worthy of consideration, so thought the court, was the circumstance that the taxpayers had not been given an opportunity to be heard until after they were compelled to pay their taxes. But this could not prevail. "The general rule," says Judge Wallace, "has often been declared that the legislature may validate retrospectively, any proceedings which they might have authorized in advance. And it is immaterial that such legislation may operate to divest an individual of a right of action existing in his favor, or subject him to a liability which did not exist originally. In a large class of cases this is the paramount object of such legislation. If, therefore, it was within the competency of the legislature to provide for the collection of a tax by a system which requires the taxpayers to pay in advance of an opportunity to be heard, but which permits them to have a subsequent hearing, and to obtain restitution, if restitution ought to be made, the validating act was constitutional." The operation of the Act was "to preserve substantially to the taxpayers the right of which they were originally deprived, to give them an opportunity to question the justice of the assessment, and to restore to them the sums which were illegally collected of them." In view of the large and almost

¹ *Williams v. Board of Supervisors*, 21 Fed. R., p. 99.

² Ch. 271, Laws of 1881.

³ *Albany City Nat Bank v. Maher*, 9 Fed. R., 884; 9 Id., p. 100.

unlimited discretion which resided in the legislature to regulate the mode and conditions of taxation it was believed to be valid and effectual to legalize the proceedings in question.¹

§ 430. **Cannot be taxed by municipalities.** A state cannot authorize a city or other municipality to exact a license, or other form of local tax, from a national bank which is doing business within its limits. Says Norton, J., in a case in which the question arose, the right of a national bank "to conduct its business as a banking institution is in no way dependent on a license to be obtained either from the state or any of its municipalities."²

In Indiana by statute national bank shares were not taxable for municipal purposes. Nevertheless a tax was imposed on them for schools and for a donation by a township to aid in building a railroad, on the ground that these taxes were not within the restriction.³

§ 431. **How state bank converted into national shall be taxed.** In changing from a state into a national bank, it is subject to state taxation until the change is complete.⁴ In one case a national bank voted to increase its capital stock and the requisite number of new shares were subscribed and paid for before January 1, 1872, and a semi-annual dividend, declared from that day, was paid on the new shares, as well as on the old. The increase of capital, however, was not approved by the Comptroller, nor his certificate issued until the 5th of January, 1872. The new shares were not subject to taxation under an ordinance imposing a tax on bank shares "in the hands of the taxpayers on the 1st of January, 1872."⁵

§ 432. **Taxation of insolvent bank.** The personal property of an insolvent national bank in the control of a receiver is exempt from state taxation. "If the shares have any value they are taxable in the hands of the holders or owners, but the property held by the receiver is exempt to the same extent it was

¹ Williams v. Board of Supervisors, 24 Fed. R., 99 pp. 101, 102, affd 122 U. S., 154.

² City of Carthage v. First National Bank, 71 Mo., 508; Mayor v. First National Bank, 59 Ga., 648; National Bank v. Mayor, 8 Heisk., 814.

³ Root v. Erdelmeyer, 37 Ind., 225.

⁴ Commonwealth v. Manufacturers & Mechanics' Bank, 2 Pearson's Dec., 386, affd 72 Pa., 70.

⁵ Charleston v. People's National Bank, 5 Rich. 103. See § 443.

before his appointment.”¹ And if the tax is levied before his appointment, but after its insolvency, a court at the receiver’s request will restrain the collector from selling the personal property of the bank to satisfy it.²

§ 432(*a*). **Duty of United States Treasurer when bank has failed.** After a national bank has failed, the power and duty of the United States Treasurer to collect the taxes that may be due therefrom are subordinated to the general power of the Comptroller. “The Treasurer represents the United States as a creditor, while the Comptroller is the embodiment of their victorial power over corporations created by the government.”³

§ 433. **Tax may be lien.** A tax by statute may become a lien on national bank shares, and their transfer while it exists, but without mentioning it, would render the transferrer liable for the amount of the tax. Thus in Wisconsin, where such a statute had been enacted, A sold to S some shares on which the tax had not been paid. A gave S a written statement purporting to contain all the facts affecting the value of the shares, but was silent concerning the tax. It was paid by the bank. S recovered, in the way of damage, the amount of the tax.⁴

§ 434. **Constitutionality of tax laws. Cummings v. National Bank.**⁵ The constitution of Ohio declares that “laws shall be passed taxing by a uniform rule all moneys, credits, investment in bonds, stocks, joint-stock companies, or otherwise,”⁶ and that “the general assembly shall provide by law for taxing the notes and bills discounted or purchased, moneys loaned, and all other property, effects, or dues of every description without deduction of all banks now existing, or hereafter created, and all bankers, so that all property employed in banking shall bear a burden of taxation equal to that imposed on the property of individuals.”⁷ Instead of having the final estimate of all taxable property determined by one commission or authorized body, this was done by “at least four different bodies acting independently of each other in regard to as many different classes of property.”

¹ *Rosenblatt v. Johnston*, 104 U. S., 462.

² *Woodworth v. Ellsworth*, 4 Colo., 580

³ *Jackson v. United States*, 20 Ct. of Claims, p. 305.

⁴ *Simmons v. Aldrich*, 41 Wis., 241.

⁵ 101 U. S., 153. ⁶ Article XII, Sec. 2.

⁷ Article XII, Sec. 3.

It was contended that the action of the final board for equalizing bank shares whose functions were to equalize them, as among themselves, throughout the state, with no power to consider the valuations of real estate which came before another board only once in ten years, or other personal property and invested capital which never came before any state board, must necessarily produce inequality in valuation as regarded other property and was therefore void because in conflict with the state constitutional rule of conformity. But the court held otherwise, and for two reasons. First, "it might be that in every instance the result would be the valuation of bank shares at a lower ratio in proportion to its real value than that of any other property." Second, if the original valuations and equalizations were based always, as the constitution required, on the actual money value of the property assessed, the result, except as it might be affected by honest mistakes of judgment, would necessarily be equality and uniformity so far as these were attainable. The system might give opportunity for maladministration of the law and violation of the principle of uniformity of taxation and equality of burden, but this was not a necessary result. "A law cannot be held unconstitutional because, while its just interpretation is consistent with the constitution, it is unfaithfully administered by those who are charged with its execution. Their doings may be unlawful while the statute is valid."

§ 434(a). **Other cases.** A Pennsylvania statute—providing that state and national banks on paying a tax of one per cent. annually on all their capital stock at its par value shall be exempt from all other taxation on their shares, capital and profits—is not a law exempting property from taxation within a provision of the constitution of that state.¹ "The tax which was thereby imposed with the consent of the bank was a commutation for all other taxes under the laws of the Commonwealth upon a class of property entirely within the power of the legislature. It was in no sense a merely nominal tax, and we need not consider what would be the effect of such a tax amounting to an entire exemption. The banking house was a part of the capital of the institution represented by its shares of stock, and a tax on the par value of the shares was a tax upon it. We do not see that the use to which the building was applied in this case should subject any portion

¹ Sec. 2, Art. 9; *County of Lackawanna v. First National Bank*, 94 Pa., 221.

of it to taxation for county purposes.”¹ By an Indiana statute enacted in March, 1867, national bank shares of banks within the state were taxed for that year, and their cashiers were required to represent each stockholder in listing and valuing his shares. It was decided that the statute took effect from the first day of that year, that it was a valid exercise of the taxing power and that it did not conflict with the constitutional requirement of a uniform and equal rate of assessment and taxation.²

A statute of Illinois provided that the stockholders in banks, whether state or national, should be assessed on the value of their shares in the county, town, village, district or city where the bank was located, whether such stockholder resided there or not; but not at a greater rate than was assessed on other moneyed capital where such bank was located; that each bank should keep a list of the names, residences, and number of shares of each shareholder, which should be open to the inspection of the revenue officers; that the assessors should ascertain and report to the county clerk a correct list of the names and residences of all stockholders with the number and assessed value of their shares; that the county clerk should enter the assessed valuation of such shares in the tax list and compute and extend the taxes thereon; that such tax should be a lien on the shares, and that the bank officers should retain the dividends on such stock until the tax was paid. This law was decided to be constitutional.³ A local statute providing a special method of taxing national bank shares was rendered void by a constitutional amendment which provided that “property shall be assessed for taxes under general laws and by uniform rules.”⁴

¹ Sec. 2, Art. 9; *County of Lackawanna v. First National Bank*, 94 Pa., p 224.

² *Whitney v. Ragsdale*, 33 Ind., 107.

³ *Nickerson v. Kimball*, 1 Chic. L. J., 42.

⁴ *Id.* An Iowa statute providing for the taxation of shares in national banks having been declared invalid because the capital instead of the shares of state banks were taxed, a new statute for taxing shares in national banks was passed and which repealed “all acts and parts of acts inconsistent with its provisions.” It was decided that the repealing clause effected a repeal of the provision of the law taxing the capital of the state banks, and as they could be thereafter taxed, if any existed, under the general revenue law of the state the new statute for taxing national banks was in harmony with the national law on the subject. *Morseman v. Younkin*, 27 Iowa, 350. A Nebraska

§ 435. **State tax officers cannot inspect national banks.** Congress has declared that "no association shall be subject to any visitatorial powers other than such as are authorized by this Title, or are vested in the courts of justice."¹ This statute will protect national bank officers in withholding bank books from state officials who may desire to inspect them for the purpose of getting information relating to the deposits of taxable persons. The officers may be restrained from making such an examination by an injunction.²

§ 436. **When injunction may be issued to restrain collection.** Having shown the meaning of this section, and the limits of the taxing power of the states, we proceed to consider what remedies may be enforced to prevent the collection of illegal taxes or to recover them whenever they are paid. "When a rule or system of valuation," says Judge Miller,³ "is adopted by those whose duty it is to make the assessment, which is designed to operate unequally and to violate a fundamental principle of the constitution, and when this rule is applied, not solely to one individual, but to a large class of individuals or corporations, equity may properly interfere to restrain the operation of this unconstitutional exercise of power."

statute enacted that "the stockholders of every national bank located in this state, or of any bank incorporated under the laws of the state, shall be assessed and taxed on the value of their shares of stock therein * * * subject to the restriction that taxation of such shares shall not be at a greater rate than is assessed upon any other moneyed capital in the hands of individual citizens of this state in the county or precinct where such bank is located. * * * The taxes against such shares shall be levied against the holder of the same, and shall be paid by the bank." It was held that a tax thus imposed on the shares of a national bank was valid, and that its payment could be enforced by distraining or taking the property of the bank, *First National Bank v. Douglas County*, 3 Dill., 330.

¹ Rev. Stat., Sec. 5241.

² *First National Bank v. Hughes*, 6 Fed. R., 737.

³ *Cummings v. National Bank*, 101 U. S., p. 157. In Alabama it has been held that even if national bank shares were assessed under an invalid law the person assessed should pay them and bring an action at law for their recovery. An injunction would not be issued to restrain their collection, though the municipal corporation collecting them was insolvent, *National Commercial Bank v. Mayor*, 62 Ala., 284. This rule is opposed to the much better one stated in the text, and is difficult to support on grounds of reason or fairness.

Their collection will not be restrained unless there is a statutory discrimination against national bank shares; or unless under any rule established by the assessing officers they are rated higher in proportion to their actual value than other moneyed capital.¹ But "when the inequality of valuation is the result of a statute of the state designed to discriminate injuriously against any class of persons or any species of property, a court of equity will give appropriate relief; and also where, though the law itself is unobjectionable, the officers who are appointed to make assessments combine together and establish a rule or principle of valuation, the necessary result of which is to tax one species of property higher than others, and higher than the average rate, the court will also give relief."²

If bank shares are taxable and are not excessively valued, equity will not restrain their collection even though the assessing officers may have arrived at a correct result by an erroneous method.³ Nor will equity afford relief to a complainant who cannot show that "the burden imposed on him is greater than it would have been if the laws had been faithfully executed by taxing all property by a uniform rule, and according to its true value in money; and also, that the tribunals provided in the system of taxation, for redress against inequalities, had been appealed to in vain."⁴

§ 437. **Shareholder must have exhausted prior remedy.** In *Wagoner v. Loomis*,⁵ "a gross, if not scandalous inequality exists between the burden of taxation cast upon bank shares and that imposed upon other property in the county of Seneca." Nevertheless no relief was afforded by the courts because the shareholders did not appear in due season before the board for the equalizing of values and ask for a correction of their assessment. "True," say the court, "the attention of the auditor was called to the fact that the valuation of these bank shares was higher in proportion to their true value than the valuations of other property in the county; but there is nothing in

¹ *National Bank v. Kimball*, 103 U. S., 732.

² *Miller, J., Id.*, p. 735; *People v. Weaver*, 100 U. S., 539; *Pelton v. National Bank*, 101 U. S., 143.

³ *St. Louis National Bank v. Papin*, 3 Cent. L. J., 669, S. C. 4 Dill, 29.

⁴ *Wagoner v. Loomis*, 37 Ohio, 571 p. 582.

⁵ 37 Ohio, 571 p. 582.

the record to lead us to believe that the annual city and county boards of equalization would not, if complaint had been made, have advanced the valuation of all other property in the county to its true value in money. * * We cannot correct it now.”¹ But if, in consequence of a defect in the law, a person who has been assessed has no opportunity to appear before a board of equalization or correction to show wherein his assessment is erroneous, he may invoke the aid of a court of equity to prevent the illegal excess of tax.²

§ 438. **Must pay amount due before applying.** “No one can be permitted to go into a court of equity to enjoin the collection of a tax until he has shown himself entitled to the aid of the court by paying so much of the tax assessed against him as it can be plainly seen he ought to pay. * * He shall not be permitted, because his tax is in excess of what is just and lawful, to screen himself from paying any tax at all until the precise amount which he ought to pay is ascertained by a court of equity.”³

§ 439. **When national bank can have collection enjoined.** A national bank can bring a bill in equity to enjoin the collection of a tax on its shares, which has been assessed against its shareholders, if able to show that it would be subjected to a multiplicity of suits which would interfere with its business and impair its credit, or that the law itself is invalid. Said Brown, J., in a case involving this question: “I think the bank is so far the trustee of the stockholders, and the custodian of the dividends that it is entitled to maintain the bill. It might be subjected to great annoyance by stockholders who denied the legality of the tax, and gave the bank notice that it would pay it at the peril of being sued by them. It is certainly no hardship to permit the whole question to be litigated in a single action.”⁴ In another case it was urged that the bank should pay the tax and then sue for it in a court of law, but Miller, J., replied that “the bank is not in a condition where the remedy is adequate. In paying the money it is acting in a fiduciary capacity

¹ See *Stanley v. Supervisors*, 121 U. S., 535; *Williams v. Supervisors*, 122 Id., 154.

² *Williams v. Supervisors*, 122 U. S., 154.

³ *Miller, J., National Bank v. Kimball*, 103 U. S., p. 733; *Williams v. Supervisors*, 122 U. S., p. 163.

⁴ *City National Bank v. Paducah*, 1 Flippin 61 p. 64.

as the agent of the stockholders—an agency created by the statute of the state. If it pays an unlawful tax assessed against its stockholders, they may resist the right of the bank to collect it from them. The bank, as a corporation, is not liable for the tax, and occupies the position of stakeholder, on whom the cost and trouble of the litigation should not fall. If it pays, it may be subjected to a separate suit by each shareholder. If it refuses, it must either withhold dividends, and subject itself to litigation by doing so, or refuse to obey the laws and subject itself to suit by the state. It holds a trust relation which authorizes a court of equity to see that it is protected in the exercise of the duties appertaining to it. To prevent multiplicity of suits, equity may interfere.”¹

§ 440. Tax illegally collected may be recovered.

Turning now to the recovery of taxes illegally collected, in New York a tax was assessed on the capital stock of a national bank which was expressly prohibited by statute. The property of the bank was seized by the tax collector and sold to pay the tax and the proceeds were paid to the municipal treasurer. The assessment was declared void, and the bank recovered the money.²

§ 441. Powers of collector. As a tax collector is a ministerial officer, the assessment roll and warrant are all the authority he requires, unless the tax itself is illegal and void.³

A collector cannot seize the property of the bank to pay a tax due from a shareholder. Thus a warrant to collect a tax which was assessed on the owners of national bank shares directed the collector “to levy the same of the goods and chattels of such persons.” It was held that the collector could not seize the property of the bank to pay the tax.⁴ Said Hunt, C.: “His authority was limited to two precise acts: first, to receive a voluntary payment; second, if such payment was not made, to levy upon and sell the goods of the persons named in the tax list.”⁵

If a tax collector be compelled to sell national bank shares for the non-payment of taxes and the bank refuses to transfer them

¹ *Cummings v. National Bank*, 101 U. S., 156.

² *National Bank v. City of Elmira*, 53 N. Y., 49.

³ *First National Bank v. Waters*, 19 Blatchf., 242; see *Erskine v. Hohnbach*, 14 Wall., 613.

⁴ *First National Bank v. Fancher*, 48 N. Y., 524.

⁵ *Id.*, p. 526; *First National Bank v. Hershire*, 31 Iowa, 18.

to the purchaser on its transfer book, it may be compelled to do so by the court.¹ Or, if the taxes remain unpaid until dividends on the shares are declared, the state, by a proper legal proceeding, can compel the officers of the bank to appropriate all or so much of the dividends as may be needed to pay the tax to that purpose.²

Capital of
state bank
converted
into national.
Rev. Stat.
Sec. 3410

§ 442. "The capital of any state bank or banking association which has ceased or shall cease to exist, or which has been or shall be converted into a national bank, shall be assumed to be the capital as it existed immediately before such bank ceased to exist or was converted as aforesaid."³

When circu-
lation to be
exempt from
tax.
Rev. Stat.
Sec. 3411.

§ 443. "Whenever the outstanding circulation of any bank, association, corporation, company, or person is reduced to an amount not exceeding five per centum of the chartered or declared capital existing at the time the same was issued, said circulation shall be free from taxation; and whenever any bank which has ceased to issue notes for circulation deposits in the treasury of the United States, in lawful money, the amount of its outstanding circulation, to be redeemed at par, under such regulations as the Secretary of the Treasury shall prescribe, it shall be exempt from any tax upon such circulation."

Tax on pri-
vate or state
bank notes.
Rev. Stat.
Sec. 3412.

§ 444. "Every national banking association, state bank, or state banking association, shall pay a tax of ten per centum on the amount of notes of any person, or of any state bank or state banking association, used for circulation and paid out by them."

If a state bank uses its notes for circulation it must pay the tax above mentioned. This does not apply simply to the notes of other banks that are paid out.⁴

Tax on mu-
nicipal
notes.
Rev. Stat.
Sec. 3413.

§ 445. "Every national banking association, state bank, or banker, or association, shall pay a tax of ten per centum on the amount of notes of any town, city, or municipal corporation, paid out by them."

§ 446. **Meaning of last two sections.** This tax is constitutional. "Having," says Chief Justice Chase, "in the exercise of undisputed constitutional powers, undertaken to provide a currency for the whole country, it cannot be questioned that Congress may, constitutionally, secure the benefit of it to the people

¹ McVeagh v. City of Chicago, 49 Ill., 318.

² Id

³ See § 432.

⁴ Deposit Savings Association v. Marks, 3 Woods, 553.

by appropriate legislation. To this end, Congress has denied the quality of legal tender to foreign coins, and has provided by law against the imposition of counterfeit and base coin on the community. To the same end, Congress may restrain, by suitable enactments, the circulation as money of any notes not issued under its own authority. Without this power, indeed, its attempts to secure a sound and uniform currency for the country must be futile."¹

In a later case² Chief Justice Waite said: "The tax thus laid is not on the obligation, but on its use in a particular way. As against the United States, a state municipality has no right to put its notes in circulation as money. It may execute its obligations, but cannot, against the will of Congress, make them money. The tax is on the notes paid out; that is, made use of as a circulating medium. Such a use is against the policy of the United States. Therefore the banker who helps to keep up the use by paying them out, that is, employing them as the equivalent of money in discharging his obligations, is taxed for what he does. The taxation is no doubt intended to destroy the use; but that, as has just been seen, Congress had the power to do."

§ 447. **Notes of individuals and companies.** On several occasions individuals have circulated their notes in small denominations in payment of their indebtedness, and the government has sought to impose this tax on them. In one of these cases two glass manufacturers, who were partners, and did business at Glassboro', in New Jersey, issued their notes in various amounts from five cents to five dollars, each, in payment of wages due to their workmen. They "were in printed form, except the date, number and signature, were on bank paper and had the appearance of notes intended for circulation from hand to hand."³ When redeemed they were received until the amount

¹ *Veazie Bank v. Fenno*, 8 Wall., 533 p. 549.

² *National Bank v. United States*, 101 U. S. 1.

³ The following is the form of note:

"GLASSBORO, June 18, 1876.

Five years after date we promise to pay the bearer at our store in Glassboro, Gloucester county, N. J.,

FIVE CENTS,

in lawful money of the United States, for value received. This promissory note will be taken by us, at or before its maturity, for the amount named herein, in payment or any debts due us.

[Signed]

WARRICK & STANGER."

No. _____.

reached \$67,474.31; while the average amount in circulation was about \$2,300. In charging the jury the judge told them that in order to render the defendants liable it must be shown that it was their purpose when paying out the notes to put them in circulation, and further that the paying out of the notes knowing that they would be used and circulated as money, was evidence from which the jury might infer the intention to pay them out for that purpose. In reviewing the charge Judge Bradley thought that the defendants could not have reasonably asked for anything more favorable; no error had been committed.¹ In such an action the taxes may be recovered without an assessment of them by the Commissioner of Internal Revenue.² Nor will the smallness of the denomination of the note prevent the government from taxing it.³ Moreover, every issue, whether the original issue or a reissue, is a new issue, and can be taxed.⁴ By reissuing an old note "it becomes a new note to all intents and purposes."⁵ The tax, however, is limited to notes payable in money; otherwise all kinds of negotiable paper, such as grain receipts, fare tickets, and the like, might be subject to taxation.⁶

Semi-annual
return of cir-
culation, de-
posits, capi-
tal, etc.
Rev. Stat.
Sec. 3414.

§ 448. As national banks might use the notes of state banks and municipalities, notwithstanding the requirement to pay a ten per cent. tax thereon, Congress provided in the chapter relating to Internal Revenue, how these should be collected. "A true and complete return of the monthly amount of circulation, of deposits, and of capital, as aforesaid, and of the monthly amount of notes of persons, town, city, or municipal corporation, state banks, or state banking associations paid out as aforesaid for the previous six months, shall be made and rendered in duplicate on the first day of December and the first day of June, by each of such banks, associations, corporations, companies, or persons, with a declaration annexed thereto, under the oath of such person, or of the president or cashier of such bank, association, corporation, or company, in such form and manner as may be prescribed by the Commissioner of Internal Revenue, that the

¹ United States v. Warrick, 25 Fed. R., 138.

² Id.; Dollar Savings Bank v. United States, 19 Wall., 227.

³ Id.

⁴ Id.

⁵ Id.

⁶ Matter of Aldrich, 16 Fed. R., 369.

same contains a true and faithful statement of the amounts subject to tax, as aforesaid; and one copy shall be transmitted to the collector of the district in which any such bank, association, corporation, or company is situated, or in which such person has his place of business, and one copy to the Commissioner of Internal Revenue."

§ 449. "In default of the returns provided in the preceding section, the amount of circulation, deposit, capital, and notes of persons, town, city, and municipal corporations, state banks, and state banking associations paid out, as aforesaid, shall be estimated by the Commissioner of Internal Revenue, upon the best information he can obtain. And for any refusal or neglect to make return and payment, any such bank, association, corporation, company, or person so in default shall pay a penalty of two hundred dollars, besides the additional penalty and forfeitures provided in other cases."

When amounts shall be estimated. Rev. Stat. Sec. 3415.

§ 450. "Whenever any state bank or banking association has been converted into a national banking association, and such national banking association has assumed the liabilities of such state bank or banking association, including the redemption of its bills, by any agreement or understanding whatever with the representatives of such state bank or banking association, such national banking association shall be held to make the required return and payment on the circulation outstanding, so long as such circulation shall exceed five per centum of the capital before such conversion of such state bank or banking association."

Return on circulation of state bank converted. Rev. Stat. Sec. 3416.

§ 451. "The provisions of this chapter, relating to the tax on the deposits, capital, and circulation of banks, and to their returns, except as contained in sections thirty-four hundred and ten, thirty-four hundred and eleven, thirty-four hundred and twelve, [thirty-four hundred and thirteen,]¹ and thirty-four hundred and sixteen, and such parts of sections thirty-four hundred and fourteen, and thirty-four hundred and fifteen as relates to the tax of ten per centum on certain notes, shall not apply to associations which are taxed under and by virtue of Title 'National Banks.'"

What sections apply to national banks. Rev. Stat. Sec. 3417.

§ 452. "In lieu of all existing taxes, every association shall pay to the Treasurer of the United States, in the months of January and July, a duty of one-half of one per centum each half year

U. S. tax on circulation, deposits and capital. Rev. Stat. Sec. 3214.

¹ The bracketed words were added by Act of Feb. 18, 1875.

upon the average amount of its notes in circulation, and a duty of one-quarter of one per centum each half year upon the average amount of its deposits, and a duty of one-quarter of one per centum each half year on the average amount of its capital stock, beyond the amount invested in United States bonds." In 1883 Congress repealed the tax on "capital and deposits of banks, bankers, and national banking associations, except such taxes as are now due and payable,"¹ consequently the tax on circulation is the only one now imposed on national banking associations.

Semi-annual
return.
Rev. Stat.
Secs. 5215,
5216.

§ 453. "In order to enable the Treasurer to assess the duties imposed by the preceding section, each association shall, within ten days from the first days of January and July of each year, make a return, under the oath of its president or cashier, to the Treasurer of the United States, in such form as the Treasurer may prescribe, of the average amount of its notes in circulation, and of the average amount of its deposits, and the average amount of its capital stock, beyond the amount invested in United States bonds, for the six months next preceding the most recent first day of January or July. Every association which fails so to make such return shall be liable to a penalty of two hundred dollars, to be collected either out of the interest as it may become due such association on the bonds deposited with the Treasurer, or, at his option, in the manner in which penalties are to be collected of other corporations under the laws of the United States."

"Whenever any association fails to make the half yearly return required by the preceding section, the duties to be paid by such association shall be assessed upon the amount of notes delivered to such association by the Comptroller of the Currency, and upon the highest amount of its deposits and capital stock, to be ascertained in such manner as the Treasurer may deem best."

How tax may
be collected
if bank fails
to pay.
Rev. Stat.
Sec. 5217.

§ 454. "Whenever an association fails to pay the duties imposed by the three preceding sections, the sums due may be collected in the manner provided for the collection of United States taxes from other corporations; or the Treasurer may reserve the amount out of the interest, as it may become due, on the bonds deposited with him by such defaulting association."

Refunding
excess.
Rev. Stat.
Sec. 5218.

§ 455. "In all cases where an association has paid or may pay in excess of what may be or has been found due from it,

¹ March 3, 1883, Public Laws, 47 C. 2 S. Ch. 121, Sec. 1, p. 488.

on account of the duty required to be paid to the Treasurer of the United States, the association may state an account therefor, which, on being certified by the Treasurer of the United States, and found correct by the First Comptroller of the Treasury, shall be refunded in the ordinary manner by warrant on the Treasury."

§ 456. "There shall be levied, collected, and paid for and in respect of every bank-check, draft, or order for the payment of money, drawn upon any bank, banker, or trust company, at sight or on demand, by any person who makes, signs, or issues the same, or for whose use or benefit the same is made, signed, or issued, two cents."

Tax on bank checks.
Rev. Stat.
Sec. 3418.

§ 457. "All bank-checks, drafts, or orders, as aforesaid, issued by the officers of the United States government, or by officers of any state, county, town, or other municipal corporation, are exempt from taxation: *Provided*, That it is the intent hereby to exempt from liability to taxation such state, county, town, or other municipal corporations in the exercise only of functions strictly belonging to them in their ordinary governmental and municipal capacity."

What checks exempt.
Rev. Stat.
Sec. 3420.

§ 458. "No bank-check, draft, or order, required by law to be stamped, which is issued without being duly stamped, nor any copy thereof, shall be admitted or used in evidence in any court until a legal stamp, denoting the amount of tax, is affixed thereto, as prescribed by law."

Checks as evidence.
Rev. Stat.
Sec. 3421.

§ 459. "Any person or persons who shall make, sign, or issue, or who shall cause to be made, signed, or issued, any instrument, document, or paper of any kind or description whatsoever, or shall accept, negotiate, or pay, or cause to be accepted, negotiated, or paid, any draft, or order, for the payment of money, without the same being duly stamped, or having thereupon an adhesive stamp for denoting the tax chargeable thereon, and canceled in the money required by law, with intent to evade the provisions of this Title, shall, for every such offense, forfeit the sum of fifty dollars, and such instrument, document, or paper, draft, order, not being stamped according to law, shall be deemed invalid and of no effect: *Provided*, That hereafter, in all cases where the party has not affixed to any instrument the stamp required by law thereon, at the time of making or issuing the said instrument, and he or they, or any party having an interest therein, shall be subsequently desirous of affixing such stamp to said instrument, or if said instru-

Penalty for issuing unstamped checks.
Rev. Stat.
Sec. 3422.

ment be lost, to a copy thereof, he or they shall appear before the collector of the revenue of the proper district, who shall, upon the payment of the price of the proper stamp required by law, and of a penalty of double the amount of tax remaining unpaid, but in no case less than five dollars, and where the whole amount of the tax denoted by the stamp required shall exceed the sum of fifty dollars, on payment also of interest, at the rate of six per centum on said tax from the day on which such stamp ought to have been affixed, affix the proper stamp to such instrument or copy, and note upon the margin thereof the date of his so doing, and the fact that such penalty has been paid; and the same shall thereupon be deemed and held to be as valid, to all intents and purposes, as if stamped when made or issued."

Cancellation
and fraudulent
use.
Rev. Stat.
Part of
Sec. 3423.

§ 460. "In all cases where an adhesive stamp is used for denoting any tax imposed under this chapter, except as hereinafter provided, the person using or affixing the same shall write thereon the initials of his name and the date on which such stamp is attached or used, so that it may not again be used. And every person who fraudulently makes use of an adhesive stamp to denote any tax imposed by this chapter without so effectually canceling and obliterating such stamp, except as before mentioned, shall forfeit the sum of fifty dollars.

Other meth-
ods of can-
celling.
Rev. Stat.
Part of
Sec. 3424.

§ 461. "The Commissioner of Internal Revenue is authorized to prescribe such method for the cancellation of stamps as substitute for, or in addition to the method prescribed in this chapter, as he may deem expedient and effectual."

§ 462. **Construction of the law on subject.** The Revised Statutes provided that "any collector, deputy collector, or inspector may enter, in the day time, any building or place where any articles or objects subject to tax are made, produced, or kept, within his district, so far as it may be necessary, for the purpose of examining said articles or objects. And any owner of such building or place, or person having the agency or superintendence of the same, who refuses to admit such officer, or to suffer him to examine such article or articles, shall, for every such refusal, forfeit five hundred dollars."¹ Under this section the United States brought a suit against the cashier of a national bank who refused to permit the collector of the proper district to examine checks which had been drawn on and paid by the bank. As the dec-

¹ Part of Section 3177.

laration contained no allegation that the checks were not duly stamped at the time they were made, signed and issued, it was regarded defective and the government failed to establish the cashier's liability.¹ Though a bank could be examined by a collector, or his deputy, or an inspector, a clerk of either of these officers had no authority to make an examination.

§ 463. Formerly, there was "levied and collected a tax of five per centum on all dividends in scrip or money thereafter declared due."³ A bank was sued for the five per cent. duty which it was alleged was due on a dividend made by the institution. The bank contended that at the time of making the dividend a loss had been incurred from embezzlement which was unknown; that the amount exceeded the demand of the government; that the dividend was in truth paid from the capital of the bank, and from its surplus and contingent fund that had been collected in other years. This defense was upheld. If the loss had been discovered before making the dividend, none would have been declared; the court thought that the correction ought to be permitted by way of defense "as the government officers must have allowed, if opportunity had occurred, for correction before them."⁴

Taxation of dividends.

§ 464. **Liability for reduced tax.** In 1870 Congress further enacted "that there shall be levied and collected for and during the year eighteen hundred and seventy-one a tax of two and one-half per centum * * on the amount of all dividends of earnings, income or gains hereafter declared by any bank, trust company, savings institution," beside other companies mentioned therein.⁵ Under this law national banks were required to make a return of dividends declared during the period between August 1st and December 31st, 1870, and pay a tax of two and a half per cent thereon.⁶ And if a bank refused to pay such taxes as were duly assessed, after notice and demand to pay the same, the collector or deputy collector could distrain therefor.⁷

¹ United States v. Mann., 95 U. S., 580.

² United States v. Rhawn, 33 Leg. Int., 258.

³ Act July 13, 1866, 14 Stat. at Large. 39 C. 1 S., Sec. 120 p. 138.

⁴ United States v. Central National Bank, 15 Fed. R., 222.

⁵ 16 Stat. at Large, 41 C. 2 S. Sec. 15.

⁶ United States v. State National Bank, 1 McCrary, 183.

⁷ State National Bank v. Morrison, 1 Id., 204.

CHAPTER XIX.

CONVERSION OF NATIONAL TO STATE BANKS.

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| § 465. Enabling Act of New York.
466. National bank not affected by state legislation.
467. Effect of dissolving national bank.
468. What New York Statute can effect. | § 469. When dissolution of national bank is complete.
470. What the Comptroller can do in such a case. |
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§ 465. **Enabling Act of New York.** In May,¹ 1869, the Attorney General of the United States² wrote a letter to the Comptroller of the Currency in reply to one asking his opinion on points relating to the subject of this chapter. The Comptroller stated in his letter, that he was informed, and had reason to believe, that quite a number of national banks in the city and state of New York, in order to avoid the restrictions and limitations imposed by the act of Congress, contemplated a return to the state system, under what they called the Enabling Act, passed by the legislature of that state for that purpose. And, in a previous letter, he stated that the president and directors of the National Mechanics and Farmers' Bank of Albany claimed to have converted their bank into a state banking association, under the provisions of an Act passed by the legislature of the state of New York, April 20,

¹ May 15. 13 Opinions of Attorney Generals p. 56.

² E. R. Hoar.

1867, entitled "An Act enabling national banking associations to become state banking associations," &c., and that, by virtue of such conversion, they were absolved from all allegiance and responsibility as a national bank to the office of the Comptroller of the Currency, and to the requirements of the acts of Congress.

§ 466 **National bank not affected by New York legislation.** "I am of the opinion," replied the Attorney General, "that it is not within the power of the legislature of New York to alter, modify, add to, or diminish the powers, duties, or liabilities created in or conferred upon a banking association established under an act of Congress. The powers, privileges, and duties of a corporate body are wholly derived from the sovereignty which gave it existence. The legislature of New York may undoubtedly incorporate or provide by law for the incorporation of banking associations in that state. But banking associations thus created are new and distinct bodies corporate, with which corporations deriving their existence from the United States cannot be merged, or in any manner identified, without the authority of Congress. Any lawful contract which a national banking association might make with a private person, or with another corporation, may undoubtedly be made with a corporation established by the state of New York for banking purposes, and authorized by that state to enter into such a contract.

§ 467. **Effect of dissolving national bank.** "On the dissolution of a national banking association in the manner provided by the laws of the United States, the property of such an association may be disposed of by its owners to any other parties competent by the local law to receive such transfer, so far as the restrictions, liabilities, and duties imposed by act of Congress upon the corporation winding up its affairs will admit. But it seems to me that it is a misuse of language to say that the national banking association is in any sense changed into the banking corporation created by the laws of the state, or merged in it; and I can perceive no power or authority existing in the legislature of the state of New York by which the property of the national corporation shall, 'by act of law and without any conveyance or transfer, be vested in and become the property of such state banking association.'

§ 468. **What New York statutes can effect.** "The statute of New York may, indeed, provide for the creation of a cor-

poration clothed with the capacity to receive a transfer of property in such manner as the legislature of that state may determine, and, as far as its capacity to receive is concerned, the legislature of that state has full control over the subject. But the creation of the capacity in the new corporation is an entirely different thing from the attempt to transfer from the national corporation its property. The powers and mode of action of the national corporation depend wholly upon the action of the national legislature.

§ 469. When dissolution of national bank is complete. "I am further of opinion that when a national banking association has taken the proper measures for its own dissolution in conformity with its articles of association, and under the provisions of the Act of Congress of June 3, 1864, such dissolution is not complete until the necessary action has been had for the redemption of its circulating notes, either by actually redeeming them and surrendering them to the Comptroller of the Currency, or by depositing an amount of treasury notes with him adequate to their redemption, as provided by that Act; and that until these acts are completed, the existence of the national banking association continues under the law; that its capital cannot be lawfully distributed among its shareholders, or transferred to any other person or body corporate; that it remains under the supervision of the Comptroller of the Currency in the manner and to the extent prescribed by the Act of Congress to the same extent as before its liquidation commenced; that it is still required to make regular and proper reports and returns of its condition to the Comptroller in the manner prescribed by the statute; that it is subject to the penalties which the statute provides for a failure to make such returns; that its obligation to keep its reserve of lawful money still continues; that its directors must still be the owners of so much of its capital stock as the statute directs, and that it is unlawful to impair the lien of the United States upon its assets by a transfer of them without other consideration than the formation of a new banking association by the same stockholders.

§ 470. What the Comptroller can do in such case. "It follows as a consequence that whatever remedies the act of Congress gives for a violation of its provisions may be pursued by the Comptroller of the Currency. Whether such remedy is to be found in obtaining a decree of forfeiture and appointment of a receiver by the exaction and collection of penalties, or

by an injunction from a court of equity to restrain acts from which loss or danger to the rights of the United States may be reasonably apprehended, will depend, of course, upon the special facts of the case, and upon the nature and extent of the violations of its corporate duty, which the national banking association undertaking to dissolve its corporate existence and liquidate its affairs may be found to commit."

APPENDIX.

INSTRUCTIONS AND SUGGESTIONS

IN REGARD TO THE

ORGANIZATION, EXTENSION AND MANAGEMENT OF NATIONAL BANKS.

ORGANIZATION.

1. The initiatory step in the organization of a National bank is to make a written application to the Comptroller of the Currency, giving the desired title, the location and proposed capital, and the names of at least five persons who contemplate being stockholders of the organization (section 5133, Revised Statutes). This application should be indorsed by the Representative in Congress from the district in which the bank is to be established, or accompanied by letters from other persons of prominence, vouching for the character and responsibility of the parties, and the necessities of the community where the bank is to be located.

2. If the application receives the approval of the Comptroller, he will furnish all the necessary blank forms for completing the organization, with instructions for the proper execution of the same.

The *title* applied for will be held for the applicant for a period not exceeding sixty days, during which the organization of the bank must be completed.

3. After the stock is placed, the association should enter into articles of association, as required by section 5133, Revised Statutes, and the following is submitted as a general form for these articles, to be modified in such proper manner as will meet the views of the persons forming the association:

FORM OF ARTICLES OF ASSOCIATION.

For the purpose of organizing an association to carry on the business of banking, under the laws of the United States, the undersigned, subscribers for the stock of the association hereinafter named, do enter into the following articles of association:

First.—The name and title of this association shall be "The ——— ———."

Second.—The place where its banking-house or office shall be located, and

its operations of discount and deposit carried on, and its general business conducted, shall be ———.

Third.—The board of directors shall consist of ——— shareholders. The first meeting of the shareholders for the election of directors shall be held at ———, on the ———, or at such other place and time as a majority of the undersigned shareholders may direct.

Fourth.—The regular annual meetings of the shareholders for the election of directors shall be held at the banking-house of this association on the second Tuesday of January of each year; but if no election shall be held on that day, it may be held on any other day, according to the provisions of section 5149 of the Revised Statutes; and all elections shall be held according to such regulations as may be prescribed by the board of directors, not inconsistent with the aforesaid provisions of the said section 5149 of the Revised Statutes.

Fifth.—The capital stock of this association shall be ——— thousand dollars, to be divided into shares of one hundred dollars each; but the capital may be increased, according to the provisions of section 5142 of the Revised Statutes, to any sum not exceeding ——— thousand dollars; and in case of the increase of the capital of the association, each shareholder shall have the privilege of subscribing for such number of shares of the proposed increase of the capital stock as he may be entitled to, according to the number of shares owned by him before the stock is increased.

Sixth.—The board of directors, a majority of whom shall be a quorum to do business, shall elect one of their number to be president of this association, who shall hold his office (unless he shall be disqualified, or be sooner removed by a two-thirds vote of all the members of the board) for the term for which he was elected a director; and they shall have the power to elect a vice-president, who shall also be a member of the board of directors, and who shall be authorized, in the absence or inability of the president from any cause, to perform all acts and duties pertaining to the office of president except such as the president only is authorized by law to perform, and to elect or appoint a cashier, and such other officers and clerks as may be required to transact the business of the association; to fix the salaries to be paid to them, and continue them in office, or to dismiss them, as, in the opinion of a majority of the board, the interests of the association may demand.

They shall also have power to define the duties of the officers and clerks of the association, to require bonds from them, and to fix the penalty thereof; to regulate the manner in which elections of directors shall be held, and to appoint judges of the elections; to provide for an increase of the capital of the association, and to regulate the manner in which such increase shall be made, and, generally, to do and perform all the acts that it may be legal for a board of directors to do under the Revised Statutes aforesaid; and they shall also have the power to make all by-laws that it may be proper and convenient for them to make, not inconsistent with law, for the general regulation of the business of the association, and the management and administration of its affairs.

Seventh.—This association shall continue for the period of twenty years from the date of the execution of its organization certificate, unless sooner placed in voluntary liquidation by the act of its shareholders owning at least two-thirds of its stock, or otherwise dissolved by authority of law.

Eighth.—These articles of association may be changed or amended at any time, by shareholders owning a majority of the stock of the association, in any manner not inconsistent with law; and the board of directors, or any three shareholders, may call a meeting of the shareholders for this or any other purpose, not inconsistent with law, by publishing notice thereof for thirty days in a newspaper published in the town, city or county where the bank is located, or by notifying the shareholders in writing.

In witness whereof, we have hereunto set our hands this — day of —, eighteen hundred and eighty- —.

I certify that the articles of association of the — — were executed in duplicate, and that one of the instruments so executed is the foregoing; and that the other, in all respects like the foregoing, is on file with said bank.

— —, 188—.

Cashier or President.

Instead of providing, as in the third article, for the election of the first board of directors, the names of the directors might be given in the article. This, when the stockholders are agreed at the time as to the persons who are to constitute the directors, might be much more convenient than to hold an election. In this event the third article should read as follows:

The board of directors shall consist of — — stockholders, and the following persons [here insert their names] are hereby appointed directors of this association, to hold their offices as such until the regular annual election takes place pursuant to the fourth article of these articles of association, and until their successors are chosen and qualified.

INSTRUCTIONS.

The persons uniting to organize a National bank must be natural persons—that is, individuals who can legally hold and control property in their own individual right, and not corporations, firms, or associations of any kind.

The specific number of members of which the board of directors shall consist must be named in article 3.

The proportion of paid-in capital (fifty per cent.) required for organization, must be paid in cash, and each subsequent installment must be so paid until all the capital shall be paid in. Promissory notes must not be taken, either in whole or in part, in payment of subscriptions to capital.

The manual signature of each person taking part in the organization is required to the “articles of association.”

The “articles of association,” “organization certificate,” and “certificate of officers and directors,” must be executed in duplicate, and one copy filed in the Office of the Comptroller of the Currency and one in the bank.

By strictly following these instructions the delay that a return of the paper for correction would necessitate will be avoided.

After having executed the articles of association, the stockholders

should execute an organization certificate, which should be substantially as follows:

FORM OF ORGANIZATION CERTIFICATE.

We, the undersigned, whose names are specified in article fourth of this certificate, having associated ourselves for the purpose of organizing an association for carrying on the business of banking, under the laws of the United States, do make and execute the following organization certificate:

First.—The name of the association shall be the ————.

Second.—The said association shall be located in the ——— of ———, county of ——— and State of ———, where its operations of discount and deposits are to be carried on.

Third.—The capital stock of this association shall be ——— dollars (\$——), and the same shall be divided into ——— shares of one hundred dollars each.

Fourth.—The name and residence of each of the shareholders of this association with the number of shares held by each, are as follows:

<i>Name.</i>	<i>Residence.</i>	<i>No. of Shares.</i>

Fifth.—This certificate is made in order that we may avail ourselves of the advantages of the aforesaid laws of the United States.

In witness whereof we have hereunto set our hands this ——— day of ——— 188—.

_____.

(The signature in full of every shareholder must be appended to this certificate.)

STATE OF ———.

County of ——— ss:

On this, the ——— day of ———, A. D. 188—, before me, a ——— of ———, personally came ———, to me, well known, who severally acknowledged that they executed the foregoing certificate for the purposes therein mentioned.

Witness my hand and seal of office the day and year aforesaid.

_____.

[SEAL OF NOTARY OR COURT.]

INSTRUCTIONS.

Every association will have succession for the period of twenty years from the date of the execution of this organization certificate. (Section 5136, Revised Statutes.)

The persons uniting to organize a National bank must be natural persons; that is, individuals who can legally hold and control property in their own individual right, and not corporations, firms, or associations of any kind.

The "organization certificate" must be acknowledged before a judge of a court of record or a notary public, and the names of all the shareholders signing the articles of association must appear in such acknowledgment.

The manual signature of each person taking part in the organization is required in the "organization certificate." A list of the stockholders, but not their signatures, should be given in the fourth section.

The "articles of association," "organization certificate," and "certificate of officers and directors" must be executed in duplicate, and one copy of each filed in the Office of the Comptroller of the Currency and one in the bank.

Inasmuch as the laws of the several States differ greatly as to the rights of married women in regard to their separate estates and property, and as to the effect of covenants and agreements made by them, and as to the forms of acknowledgment of instruments executed by them, they should not be made parties to the organization papers of banks.

This will not prevent their becoming stockholders by transfer of stock after an association is fully organized, and may avoid serious questions as to the legality of organizations founded upon papers executed by them.

The foregoing instructions apply solely to entirely new organizations. If it be desired to convert a bank already in existence under State laws, the method of procedure and the forms used will be found on page 18.

From this point the proceedings for the conversion of a State bank into a National association are the same as those for the organization of a new bank.

DIRECTORS.

After the execution of the organization certificate, if the directors are not designated in the articles of association, the stockholders should proceed to elect directors as provided in Section 5145, each of whom should, after his election, take an oath of the following form:

FORM OF DIRECTOR'S OATH.

STATE OF _____,

County of _____, ss:

I, the undersigned, director of the _____, of _____, of the State of _____, do solemnly swear that I am a citizen of the United States, and resident of the State of _____, and that I will, so far as the duty devolves upon me, diligently and honestly administer the affairs of said bank; and that I will not knowingly violate, or willingly permit to be violated, any of the provisions of the Revised Statutes of the United States under which this bank has been organized; and that I am the *bona fide* owner, in my own right, of the number of shares of stock subscribed by me or standing in my name on the

books of the said bank, and required by said Revised Statutes; and that the same is not hypothecated, or in any way pledged as security for any loan or debt.

Subscribed and sworn to, this ____ day of ____, 188-. before the undersigned, a ____ of said county.

FORM OF JOINT OATH.

STATE OF _____,

County of _____, ss:

We, the undersigned, directors of the _____, of _____, of the State of _____, do each of us solemnly swear that we are citizens of the United States, and residents of the State of _____, and that we will severally, so far as the duty devolves upon us, diligently and honestly administer the affairs of said bank; and that we will not knowingly violate, or willingly permit to be violated, any of the provisions of the Revised Statutes of the United States under which this bank has been organized; and that each of us is the *bona fide* owner, in his own right, of the number of shares of stock subscribed by him, or standing in his name on the books of the said bank, and required by said Revised Statutes; and that the same is not hypothecated, or in any way pledged as security for any loan or debt.

Subscribed and sworn to, this ____ day of ____, 188-, before the undersigned, a ____ of said county.

Every director, when elected, must at once take the oath in one or the other of the above forms, and transmit the same immediately to the Comptroller of the Currency.—(Sec. 5147, Revised Statutes.)

To enable a stockholder to be eligible as a director, he must be a citizen of the United States, and own, in his own right, at least one thousand dollars of the capital stock of the bank, which shall not be hypothecated or in any way pledged for any debt; and the office of any director will be vacated upon his ceasing to be the owner of this amount of stock.

At least three-fourths of the directors must have resided in the State, Territory, or District in which the association is located, for a year or more immediately preceding their election, and must be residents therein during their continuance in office.

In all elections of directors, and in deciding all questions at meetings of shareholders, each shareholder shall be entitled to one vote on each share of stock held by him. Shareholders may vote by proxies duly authorized in writing, but no officer, clerk, teller, or bookkeeper of the association can act as proxy; and no shareholder whose liability is past due and unpaid shall be allowed to vote.

FORM OF PROXY.

Know all men by these presents, that I _____ do hereby constitute and appoint _____ attorney and agent for me, and in my name, place, and stead, to vote as my proxy at any and all elections of directors of _____

— according to the number of votes I should be entitled to vote if there personally present.

In witness whereof, I have hereunto set my hand and seal this — day of —, one thousand eight hundred and —.

Sealed and delivered in the presence of }
 ————
 ————

The directors having been elected and qualified should, within a reasonable time, proceed to the election of a president and vice-president of the association, a cashier, and such other officers as may be required (Section 5136, paragraph 4), and to call in the subscriptions to the stock according to the terms of subscription and the requirements of the law. As soon as 50 per cent. of the capital stock of the association shall have been paid in, a certificate of, substantially, the following form should be executed and sworn to by a majority of the directors and by the president or cashier, and forwarded to the Comptroller.

CERTIFICATE OF OFFICERS AND DIRECTORS.

The undersigned, ————, president, ————, cashier, and ————, directors of the ————, organized under the sections of the Revised Statutes of the United States, approved June 22, 1874, which authorize the organization of National banking associations, and of subsequent acts in addition to and amendatory thereof, do hereby certify that ———— dollars have been paid into said bank, on account of its capital stock, as permanent capital; that the residence of each director, and the amount of stock of which each director is the *bona fide* owner, are as follows:

Name of Director.	Place of Residence.	Shares of Stock.

And that this bank has in good faith complied with all the provisions of said act required to be complied with before receiving authority to commence the business of banking.

—————, President.
 —————, Cashier.
 —————,
 —————,
 Directors.

STATE OF ————,
 County of ————, ss:

On this — day of —, 188—, before the undersigned, a ———— of

_____, personally appeared _____ . president, _____ , cashier, and _____ , directors of the _____ , and made oath that the foregoing certificate and the matters and things therein set forth are true to the best of their knowledge and belief.

Subscribed and sworn to before me, this _____ day of _____, 188-.

The oath of a majority of the directors of an association is sufficient for this purpose.

DEPOSIT OF BONDS.

At this point the organization of the bank is complete. The association can be authorized to commence the business of banking upon the deposit of United States *registered bonds* with the Treasurer of the United States, as required by law.

Banks with a capital of one hundred and fifty thousand dollars or less are required to deposit bonds equal to one-fourth their capital, and a deposit of at least fifty thousand dollars must be made by a bank with a capital in excess of one hundred and fifty thousand dollars.

Whether a bank avails itself or not of the privilege of taking out circulating notes, the law, in every case, requires the foregoing deposits.

Coupon bonds can be exchanged for registered bonds by sending them to the Comptroller of the Currency, with a letter requesting the exchange to be made, and that the registered bonds received in exchange be issued to the Treasurer of the United States, in trust for the association to whose credit they are to be deposited, and that they be deposited with the Treasurer.

When registered bonds are sent for deposit, they should, unless they are already so issued, be assigned (in the manner prescribed in the note printed on the back of all registered bonds) to the Treasurer of the United States, in trust for the association to whose credit they are to be deposited. They can then be transferred upon the books of the Register of the Treasury, and new bonds issued to the Treasurer, in trust for the bank, in accordance with the assignment. Much care should be exercised that the corporate names of banks may be correctly given in the assignments. Authority of the board of directors must, in every case, accompany the request for the transfer of bonds which stand in the name of any National bank.

The most convenient method of making deposit of registered bonds will be to send them to the Comptroller, assigned as above directed, requesting him to have them transferred, and also requesting him to sign the memorandum required by Section 5162 of Revised Statutes, and to deposit them with the Treasurer.

The Comptroller will authorize the payment of interest on bonds to the bank depositing them; and the Treasurer of the United States will pay the interest on all bonds, except Pacific Railroad bonds, by check, to the order of the bank, and payable at any United States Assistant Treasury or United States depository.

CERTIFICATE OF AUTHORITY TO COMMENCE BUSINESS.

The necessary amount of bonds having been deposited with the Treasurer, the Comptroller will, *if he is satisfied* (section 5168) that the said association has properly complied with the requirements of the law, and that the shareholders have in good faith organized it for the legitimate objects contemplated by the bank act, give to the association a certificate authorizing it to commence the business of banking. This certificate, upon the receipt thereof, must be published according to the requirements of section 5170 Revised Statutes. A copy of this *publication* should be forwarded to the Comptroller.

COMMENCEMENT OF BUSINESS.

The association is now ready to commence the regular business of banking, for which it is presumed the proper preparation has been made, viz.: that a suitable and safe banking-house or room has been secured, with a good vault or safe (which ought to be both burglar and fire proof), and the necessary books and papers, in regard to all of which the Comptroller will require full and satisfactory information.

CAPITAL REQUIRED.

No association can be organized, without especial authority of the Secretary of the Treasury, with a less capital than one hundred thousand dollars, and then only in places of less than six thousand inhabitants; and in cities with a population exceeding fifty thousand, no bank can be organized with less capital than two hundred thousand dollars.

PAYMENT OF CAPITAL.

The certificate of officers and directors, a form for which is given on page 11, is the certificate of the payment of the *first* installment of the capital. The five remaining installments must be paid in and certified to the Comptroller, one on each successive thirty days from the *date of the Comptroller's certificate of authority to commence business*.

The form usual for these certificates is as follows:

CERTIFICATE OF PAYMENT OF CAPITAL STOCK.

— BANK, —, 188—.

SIR: It is hereby certified that the — installment, amounting to — dollars (\$—), has been paid in on account of the capital stock of the —, making the total amount paid in on the capital stock of this bank \$—.

[SEAL OF BANK.]

To the COMPTROLLER OF THE CURRENCY,

Washington, D. C.

Cashier.

STATE OF _____,

County of _____, ss.:

Subscribed and sworn to, before the undersigned _____ of the said county, this _____ day of _____, 188—.

N. B.—Banks are requested not to report the payment of any one installment twice, except as included in total amount paid in.

In reference to the legal method of enforcing the payment of subscriptions to capital stock, see section 5141, Revised Statutes.

INCREASE OF CAPITAL.

As section 5142 Revised Statutes provides that no increase of capital shall be valid until the whole amount of such increase is paid in, and the approval of the Comptroller obtained, it will be proper for the officers of banks, whose stockholders may propose to increase their capital stock, to advise the Comptroller of their desire to do so, and obtain his consent before making the increase. When an increase of capital is made, and before its validity can be recognized, notice thereof must be transmitted to the Comptroller, which notice should be in the following form:

CERTIFICATE OF INCREASE OF CAPITAL.

_____ NATIONAL BANK OF _____,

To the COMPTROLLER OF THE CURRENCY,

Washington, D. C.:

It is hereby certified that the capital stock of "The _____ National Bank of _____" has been increased, pursuant to the articles of association of said bank, in the sum of _____ dollars, all of which has been paid in, and that the paid-up capital stock of said bank now amounts to _____ dollars.

[SEAL OF BANK.]

_____,
Cashier.

STATE OF _____,

County of _____ ss.:

I, _____, cashier of "The _____ National Bank of _____," in the State of _____, do solemnly swear that the foregoing certificate by me subscribed is true.

Subscribed and sworn to before me this _____ day of _____, 188—.

REDUCTION OF CAPITAL.

Any association may, by a vote of stockholders owning two-thirds of its stock, reduce its capital within certain limits, but, before any reduction is valid, it must be certified to the Comptroller and his approval obtained.

Before approval can be given, however, the circulation of the bank must be reduced to an amount not in excess of the limit fixed by law on the capital after reduction. This may be done by a deposit of lawful money with the United States Treasurer, to retire the circulation outstanding in excess of this limit.

The certificate of reduction should be in the following form:

——— NATIONAL BANK OF ———,
———, 188—.

To the COMPTROLLER OF THE CURRENCY,
Washington, D. C.

It is hereby certified that the capital stock of "The ——— National Bank of ———" has been reduced by a vote of the shareholders owning two-thirds of the stock of the association, in accordance with the provisions of section 5143 of the Revised Statutes of the United States, in the sum of ——— dollars, and that the paid-up capital stock of said bank since said reduction is ——— dollars.
[BANK SEAL.]

———,
Cashier.

STATE OF ———,
County of ———, ss.:

I, ———, cashier of "The ——— National Bank of ———," in the State of ———, do solemnly swear that the foregoing certificate, by me subscribed, is true.

———,
Cashier.

Subscribed and sworn to before me this ——— day of ———, 188—.

NOTE.—A record of the vote of stockholders should be kept and forwarded with this notice.

Before the amount of the reduction of capital is returned to stockholders, all bad and worthless assets must be charged to the same. The whole amount of such reduction after worthless assets, if any, have been charged off, must be returned *pro rata* to shareholders. No part of it can be carried to surplus or to undivided profits without the unanimous consent of stockholders. In making the reduction the shareholders should be required to return their old certificates and receive their *pro rata* of the reduction, together with new certificates for the reduced amount. It will, of course, often be necessary to issue the new certificates for fractional shares.

Banks located in towns with more than six thousand, or in cities of more than fifty thousand inhabitants, cannot reduce their capital below one hundred thousand dollars in the one case, and two hundred thousand dollars in the other. Banks in towns of less than six thousand inhabitants can reduce their capital to fifty thousand dollars.

BY-LAWS.

When a bank is organized, the board of directors should adopt by-laws (section 5136, Revised Statutes, paragraph 6), of which the following is submitted as a general form, to be modified in such manner as will make them suitable for the circumstances of the respective banks and the views of their directors:

GENERAL FORM OF BY-LAWS OF NATIONAL BANKS.

By-laws of the [here insert the title of the bank] organized under the National banking laws of the United States.

ELECTIONS.

SECTION 1. The regular annual meetings of the stockholders of this bank for the election of directors shall be held at its banking-house on the second Tuesday of January of each year, between the hours of ten and four of said day, thirty days' notice of the time and object of which meeting shall be given by the cashier of this bank, by publication in [here insert the name of the newspaper in which the notice is to be published]. And it shall be the duty of the board of directors, within one month previous to the time of said election, to appoint three stockholders to be judges of said election, who shall hold and conduct the same, and who shall, after the election has been held, notify under their hands the cashier of this bank of the result thereof, and the names of the directors-elect.

SEC. 2. The cashier, upon receiving the returns of the judges of the election as aforesaid, shall cause the same to be recorded upon the minute-book of the bank, and shall notify the directors-elect of their election, and of the time at which they are required to meet at the banking-house of the bank for the purpose of organizing the new board. If at the time fixed for the meeting of the directors-elect there should not be a quorum in attendance, the members present may adjourn from time to time until a quorum is secured; and no business shall be transacted prior to qualifying by taking the oath of office as prescribed by law.

SEC. 3. If, for any cause, the annual election of directors should not be held on the date fixed in the articles of association, the directors in office shall order an election to be held on some other day, of which special election notice shall be given in accordance with the requirements of section 5149 Revised Statutes, judges appointed, returns made and recorded, and the directors-elect notified according to the provisions of sections one and two of these by-laws.

OFFICERS.

SEC. 4. The officers of this bank shall be a president, vice-president, cashier, teller, bookkeeper, and such other officers as may be from time to time required for the prompt and orderly transaction of its business, to be elected or appointed by the board of directors by whom their several duties may be prescribed.

SEC. 5. The president shall hold his office for the current year for which the board of which he shall be a member was elected, unless he shall resign, become disqualified, or be removed; and any vacancy occurring in the office of president or in the board of directors shall be filled by the remaining members.

SEC. 6. The cashier and the subordinate officers and clerks shall be appointed to hold their offices respectively during the pleasure of the board of directors.

SEC. 7. The cashier of this bank shall be responsible for all the moneys, funds, and valuables of the bank, and shall give bond, with security to be approved by the board, in the penal sum of ——— dollars, conditioned for the faithful and honest discharge of his duties as such cashier, and that he will faithfully apply and account for all such moneys, funds and valuables, and deliver the same to the order of the board of directors of this bank, or to the person or persons authorized to receive them.

SEC. 8. The president of this bank shall be responsible for all such sums of money and property of every kind as may be intrusted to his care or placed in his hands by the board of directors or by the cashier, or otherwise come into his hands as president, and shall give bond, with security to be approved by the board, in the penal sum of ——— dollars, conditioned for the faithful discharge of his duties as such president, and that he will faithfully and honestly apply and account for all sums of money and other property of this bank that may come into his hands as such president, and pay over and deliver the same to the order of the board of directors, or to any other person or persons authorized by the board to receive the same.

SEC. 9. The teller shall be responsible for all such sums of money, property, and funds of every description as may, from time to time, be placed in his hands by the cashier, or otherwise come into his possession as teller; and shall give bond, with security to be approved by the board, in the penalty of ——— dollars, conditioned for the honest and faithful discharge of his duties as teller, and that he will faithfully apply, account for, and pay over all moneys, property, and funds of every description that may come into his hands by virtue of his office as teller, to the order of the board of directors aforesaid, or to such person or persons as may be authorized to demand and receive the same.

SEAL.

SEC. 10. The following is an impression of the seal adopted by the board of directors of this bank.

{ Impression }
 { of seal. }

CONVEYANCE OF REAL ESTATE.

SEC. 11. All transfers and conveyances of real estate shall be made by the bank, and under the seal thereof, in accordance with the orders of the board, and shall be signed by the president or cashier.

INCREASE OF STOCK.

SEC. 12. Whenever an increase of stock shall be determined upon, in accordance with the provisions of the articles of association of this bank, it shall be the duty of the board to notify all the stockholders of the same, and to cause a subscription to be opened for such increase of capital. In the increase of capital each stockholder shall have the privilege of subscribing for such number of shares of the new stock as he may be entitled to subscribe for, according to his existing stock in the bank. If any stockholder should fail to subscribe for the amount of stock to which he may be entitled, the board of directors may determine what disposition shall be made of the privilege of subscribing for the unsubscribed stock.

BUSINESS OF THE BANK.

SEC. 13. This bank shall be opened for business from ——— o'clock A.M. to ——— o'clock P.M. of each day of the year, excepting Sundays and days recognized by the laws of this State as national and religious holidays. When any regular weekly meeting of the board of directors falls upon a holiday, the meeting shall be held upon such other day as the board may previously designate.

SEC. 14. The regular meetings of the board of directors shall be held on the [here insert time of meetings]. Special meetings may be called by the president, cashier, or at the request of three or more directors, and should there

be no quorum at any regular or special meeting, the members present may adjourn from day to day until a quorum is in attendance. Any meeting may be adjourned by a vote of a majority of a quorum, but in the absence of a quorum no business shall be transacted.

SEC. 15. There shall be a committee, to be known as the exchange committee, consisting of the president, cashier, and directors, appointed by the board every —— months, to continue to act until succeeded, who shall have power to discount and purchase bills, notes, and other evidences of debt, and to buy and sell bills of exchange; and who shall, at each regular meeting of the board of directors, make a report of all bills, notes, and other evidences of debt discounted and purchased by them for the bank since their last previous report.

MINUTES.

SEC. 16. The organization papers of this bank, the returns of the judges of the elections, the proceedings of all regular and special meetings of the directors, the by-laws and any amendments thereto, and reports of the examining committees of directors shall be recorded in the minute-book; and the minutes of each meeting shall be signed by the president and attested by the cashier.

TRANSFERS OF STOCK.

SEC. 17. The stock of this bank shall be assignable and transferable only on the books of this bank, subject to the restriction and provisions of the banking laws; and a transfer-book shall be provided in which all assignments and transfers of stock shall be made.

SEC. 18. Transfers of stock shall not be suspended preparatory to the declaration of dividends; and, unless an agreement to the contrary shall be expressed in the assignments, dividends shall be paid to the stockholders in whose name the stock shall stand at the date of the declaration of dividends.

SEC. 19. Certificates of stock signed by the president and cashier may be issued to stockholders, and the certificate shall state upon the face thereof that the stock is transferable only upon the books of the bank; and when stock is transferred, the certificates thereof shall be returned to the bank and canceled, and new certificates issued.

EXPENSES.

SEC. 20. All the current expenses of the bank shall be paid by the cashier, who shall, every six months, or oftener, if required to do so, make to the board a detailed statement thereof.

CONTRACTS.

SEC. 21. All contracts, checks, drafts, &c., and all receipts for circulating notes received from the Comptroller of the Currency, shall be signed by the president or cashier.

EXAMINATIONS.

SEC. 22. There shall be appointed by the board of directors a committee of —— members, whose duty it shall be to exercise a supervision of the business of the bank, and to examine every three months the affairs of this bank, count its cash, and compare its assets and liabilities with the accounts of the general ledger, ascertain whether the accounts are correctly kept and the condition of the bank corresponds therewith, and whether the bank is in a sound and solvent condition; and to recommend to the board such changes in the man-

ner of doing business, &c., as shall seem to be desirable; the result of which examination shall be reported to the board at the next regular meeting thereafter.

SEC. 23. The board of directors shall have power to change the form of the books and accounts when deemed expedient and define the manner in which the affairs of the bank shall be conducted.

QUORUMS.

SEC. 24. A majority of the directors, including the president or vice-president, shall be a quorum to do business.

SEC. 25. These by-laws may be changed or amended by the vote of two-thirds of the directors.

CONVERSION OF STATE BANKS.

Section 5154 of the Revised Statutes provides for the conversion of banks existing under State laws into National banking associations, but the Comptroller recommends in all cases the organization of an entirely new association in preference to conversion. The provisions of the section referred to are as follows:

Any bank incorporated by special law, or any banking institution organized under a general law of any State, may become a National association under this title by the name prescribed in its organization certificate; and in such case the articles of association and the organization certificate may be executed by a majority of the directors of the bank or banking institution; and the certificate shall declare that the owners of two-thirds of the capital stock have authorized the directors to make such certificate, and to change and convert the bank or banking institution into a National association. A majority of the directors, after executing the articles of association and organization certificate, shall have power to execute all other papers, and to do whatever may be required to make its organization perfect and complete as a National association.

As an indication and evidence of this assent, it would be well, although it may not be absolutely necessary, for the stockholders to execute a paper similar to the following:

AUTHORITY OF STOCKHOLDERS TO DIRECTORS FOR THE CONVERSION OF A STATE INTO A NATIONAL BANK.

We, the undersigned, stockholders of the [here insert the name of the bank], located in the ——— of ——— county of ———, and State of ———, having a capital of ——— dollars, do hereby authorize and empower the directors thereof to change and convert said bank into a National banking association, under the general banking laws of the United States, and according to the provisions of section 5154, Revised Statutes of the United States, and we do also authorize the said directors, or a majority thereof, to make and execute the articles of association and organization certificate required to be made or contemplated by said laws, and also to make and execute all other papers and certificates, and to do all acts necessary to be done to convert said ——— into a National association, and also to do and perform all such acts as may be necessary to transfer the assets of every description and character of said ——— to the National banking association into which it is to be converted, so that the said conversion may be absolute and complete.

And we do hereby assume, and authorize the said directors to assume, as the name of the National banking association into which the said — is to be converted, "The [here insert the name of the association];" and we do hereby appoint [here insert the names of the directors], who are now the directors of the said [here insert the name of the State bank about to be converted], to be directors of the said [here insert the name of the association], to hold their offices as such directors until the regular annual election of directors is held, pursuant to the provisions of said laws, and until their successors are chosen and qualified.

And we do hereby authorize the said directors to continue in office the officers of the said [here insert the name of the State bank about to be converted], or to appoint or select others, as to them may seem best.

In witness whereof, we have hereunto set our hands, and written against our names the number of shares owned by us respectively, this — day of —, A. D., 18—.

<i>Names of Stockholders.</i>	<i>Stock Owned by Each.</i>

This paper, being the authority for the action of the directors in converting the State bank into a National bank, should be carefully preserved, and a copy thereof entered upon the minutes of the National banking association. A certified copy, under the seal of the State bank, should also accompany the organization certificate sent to the Comptroller of the Currency.

The directors, being thus authorized by the stockholders to change their bank into a National association, should proceed to execute articles of association and an organization certificate.

The following is submitted as a general form for such articles:

ARTICLES OF ASSOCIATION.

We, the undersigned, directors of the — —, having been authorized by the owners of two-thirds of the capital stock of said bank to change and convert the said bank into a National banking association, under section 5154 of the Revised Statutes of the United States, approved June 22, 1874, and of subsequent acts in addition to or amendatory thereof, and to execute articles of association, do hereby, in our own behalf, and in behalf of the stockholders whom we represent, make and execute the following articles of association:

First.—The name and title of the association into which the said — is to be changed and converted shall be the — —.

Second.—The place where its banking-house or office shall be located, and

its operations of discount and deposit carried on, and its general business conducted, shall be the ———, in the county of ——— and State of ———.

Third.—The board of directors shall consist of ——— stockholders.

Fourth.—The regular annual election of directors shall be held on the second Tuesday of January of each year; but if no election shall be held on that day it may be held on any other day, according to the provisions of the tenth section of the act; and all elections shall be held according to such regulations as may be prescribed by the board of directors of the association, not inconsistent with the provisions of the aforesaid act.

Fifth.—The capital stock of this association shall be ——— thousand dollars, to be divided into shares of ——— each; but the capital may be increased, according to the provisions of section 5142 of the Revised Statutes, to any sum not exceeding ——— thousand dollars; and in case of the increase of the capital of the association, each stockholder shall have the privilege of subscribing for such number of shares of the proposed increase of the capital stock as he may be entitled to according to the number of shares owned by him before the stock is increased.

Sixth.—The board of directors (a majority of whom shall be a quorum to do business) shall elect one of their number to be president of this association, who shall hold his office (unless he shall become disqualified, or be sooner removed by a two-thirds vote of all the members of the board) for the term for which he was elected a director; and they shall have power to elect a vice-president, who shall also be a member of the board of directors, and to elect or appoint a cashier, and such other officers and clerks as may be required to transact the business of the association; to fix the salaries to be paid to them, and to continue them in office, or to dismiss them, as, in the opinion of a majority of the board, the interests of the association may demand.

They shall also have power to define the duties of the officers and clerks of the association, to require bonds from them, and to fix the penalty thereof; to regulate the manner in which elections of directors shall be held, and to appoint judges of the elections; to provide for an increase in the capital of the association, and to regulate the manner in which such increase shall be made; and, generally, to do and perform all the acts that it may be legal for a board of directors to do under the statute aforesaid; and they shall also have the power to make all by-laws that it may be proper and convenient for them to make, under said statute, for the general regulation of the business of the association and the entire management and administration of its affairs; which by-laws may prohibit, if the directors shall so determine, the transfer of stock owned by any stockholder who may be liable to this association, either as principal debtor, or otherwise, without the consent of the board.

Seventh.—This association shall continue for the period of twenty years from the date of the organization certificate, unless sooner dissolved by the act of its stockholders owning at least two-thirds of its stock, who may dissolve and close up the association in such a manner as they may deem to be for the interest of the stockholders and creditors of the association, but subject to the restrictions, requirements, and provisions of the act.

Eighth.—These articles of association may be changed or amended at any time by stockholders owning a majority of the stock of the association, in any

manner not inconsistent with the provisions of the Revised Statutes; and the board of directors, or any three stockholders, may call a meeting of stockholders for this purpose.

In witness whereof, we, the directors aforesaid, for ourselves as such directors, and in behalf of the stockholders of the ————, have hereunto set our hands this ——— day of ———, eighteen hundred and ———.

This paper to be executed in duplicate.

I certify that the articles of association of the ———— were executed in duplicate, and that one of the instruments so executed is the foregoing; and that the other, in all respects like the foregoing, is on file with said bank.

———, 18——.

Cashier or President.

Articles of association having been executed, the directors should proceed to execute an organization certificate, of which the following is a form.

ORGANIZATION CERTIFICATE

We, the undersigned, directors of the ————, having been duly authorized by the owners of two-thirds of the capital stock of said bank to change said bank into an association, and to make the necessary organization certificate, under the sections of the Revised Statutes which authorize the conversion of State banks into National associations, approved June 22, 1874, and of subsequent acts in addition to or amendatory thereof, do sign and execute the following organization certificate, which we do hereby declare we are authorized to make by the owners of two-thirds of the capital stock of said ————.

First.—The name and title of this association shall be "The ————."

Second.—The said association shall be located and continued in the ——— of ———, county of ———, and State of ———, where its operations of discount and deposit are to be carried on.

Third.—The capital stock of this association shall be ——— dollars (\$———), and the same shall be divided into ——— shares of ——— dollars each, as it is now divided in the said "The ————."

Fourth.—The name and residence of each of the stockholders of the said ————, which is to become a National bank under the provisions of the Revised Statutes aforesaid, and the number of shares of ——— dollars each, held by each stockholder, are as follows:

<i>Name.</i>	<i>Residence.</i>	<i>No. of Shares.</i>

Fifth.—This certificate is made in order that the said ———— and the stockholders thereof may avail themselves of the advantages of the afore-

said Revised Statutes, and that the said ———— may be changed and converted into a National banking association under the name and title of the ————.

In witness whereof, we have hereunto set our hands this ——— day of ———, eighteen hundred and ———.

STATE OF ———,

County of ———. ss :

On this the ——— day of ———, A. D. 18—, personally came before me, a ———, of said county, ———, ———, directors of the ———, to me well known, who severally acknowledged that they executed the foregoing certificate for the purposes therein mentioned.

Witness my hand and seal of office the day and year aforesaid.

All other papers and proceedings will be similar to those required of new associations organized under the National banking laws.

EXTENSION OF CORPORATE EXISTENCE.

The act of July 12, 1882, provides for the extension of the corporate existence of National banking associations whose periods of succession are about to expire. All National banks now in existence which have not already extended under this act, were originally organized under the provisions of the act of June 3, 1864. Section 8 of the last-named act, now section 5136 of the Revised Statutes of the United States, provides that all associations organized under it shall have succession for twenty years from the date of the execution of their organization certificates. The officers of a National bank can therefore tell the date of expiration of their association by taking that of the execution of its organization certificate and adding twenty years thereto. If the paper is lost, or the date in any way uncertain, information can be obtained on application to the Comptroller of the Currency. Under the act of July 12, 1882, and the regulations of the Comptroller's office, banks are permitted to file their application for extension, with the proper papers, at any time within six months prior to their expiration, and the necessary blank will be sent from that office a sufficient time in advance to enable them to do so.

The following are copies of the forms:

Office of the Comptroller of the Currency, {
Form 201.

AMENDMENT TO ARTICLES OF ASSOCIATION.

———— NATIONAL BANK ———.

In accordance with and in pursuance of the provisions of "An Act to enable National banking associations to extend their corporate existence, and for other purposes," approved July 12, 1882, we, the undersigned, shareholders of "The ———," located at ——— in the county of ——— and State of ———, owning the shares of the capital stock of said association set opposite our respective names, aggregating not less than two-thirds of the stock

of said association, the total number of shares representing the capital stock of said National banking association being ——— shares, do hereby consent and agree that the ——— article of the articles of association of said National banking association be, and is hereby, amended to read as follows:

"This association shall continue until ———, 19—, unless sooner placed in voluntary liquidation by the act of its shareholders owning at least two-thirds of its stock, or otherwise dissolved by authority of law."

In witness whereof, we, the undersigned, have hereto set our hands.

<i>Date of Signing.</i>	<i>Name.</i>	<i>Address.</i>	<i>No of Shares.</i>

——— NATIONAL BANK ———,
———, 188—.

SIR: I do hereby certify, in pursuance of the provisions of "An act to enable National banking associations to extend their corporate existence, and for other purposes," approved July 12, 1882, that the amendment of the articles of association to which this certificate is attached of "The ———," and the consent to the same in writing, was executed in duplicate by shareholders owning not less than two-thirds of the stock of said bank; and I do further certify that the signatures of the shareholders to said consent and said amendment of the articles of association are the true and correct signatures of said shareholders or of their lawfully-appointed attorneys; and that one of the instruments so executed is the foregoing, and that the other, in all respects like the foregoing, is on file in said bank.

[SEAL OF BANK.]

_____,
President or Cashier.

To the COMPTROLLER OF THE CURRENCY,

Washington, D. C. :

_____, 188—.

SIR: I certify that the said amendment to the articles of association of "The ———" was duly recorded upon the minute-book of said association on the ——— day of ———, 18—, and that the above certificate was certified under the seal of the association in accordance with a resolution of its board of directors, duly adopted at a meeting of said directors on the ——— day of ———, 18—.

[SEAL OF BANK.]

_____,
Cashier.

To the COMPTROLLER OF THE CURRENCY,

Washington, D. C. :

APPLICATION OF PRESIDENT OR CASHIER.

[Section 2, Act July 12, 1882.]

——— NATIONAL BANK ———,
———, 188—.

SIR: I hereby request the Comptroller of the Currency to approve the in-

closed amendment of the articles of association of this bank, extending its corporate existence for twenty years, pursuant to the provisions of the act of Congress entitled "An act to enable National banking associations to extend their corporate existence, and for other purposes," approved July 12, 1882

The amendment is accompanied by the certificate required by law.

Very respectfully,

_____,
President or Cashier.

To the COMPTROLLER OF THE CURRENCY,

Washington, D. C.

The law does not require that a meeting of the stockholders shall be held; it is sufficient to secure the consent of those representing two-thirds of the stock, and this may be done by sending in advance to each stockholder a power of attorney to be signed and returned by him, some person other than an officer of the bank being empowered to act as attorney. The following form may be used for this purpose:

FORM FOR POWER OF ATTORNEY.

Know all men by these presents, that I, _____, of _____, hereby constitute and appoint irrevocably _____ my true and lawful attorney for me and in my name and stead to sign all necessary papers in connection with the extension of the corporate existence of the _____ under the act of Congress approved July 12, 1882; and I hereby consent that the _____ article of the articles of the association of the _____ be so amended as to read as follows: "This association shall continue until close of business on _____, unless sooner placed in voluntary liquidation by the act of its shareholders, owning at least two-thirds of its stock, or otherwise dissolved by authority of law." Hereby granting unto my said attorney full power and authority to act in and concerning the premises as fully and effectually as I might do if personally present.

In witness whereof, I have hereunto set my hand and seal, this _____ day of _____, in the year one thousand eight hundred and eighty-two.

Signed and sealed in presence of— _____.

These powers of attorney, signed by the stockholders should be sent to the Comptroller, with the amendment to the articles of association, on which their names, signed by their authorized attorney, appear.

If preferred, a stockholders' meeting may be called for a convenient date, in order to vote for the extension and to sign the necessary papers.

Notice of the meeting should be sent by mail to each stockholder, and may also be announced by publication. At this meeting the stockholders may appear in person or by attorney, the power given to the latter being similar in form to that inserted above. In executing and forwarding the papers, the following instructions must be strictly observed:

INSTRUCTIONS.

19 The certificate of the president or cashier, certifying that stockholders owning at least two-thirds of the stock have consented, in writing, to the amendment, should be executed in duplicate, and one copy transmitted to this Office, together with the letter applying for approval of the Comptroller, at least one month previous to the expiration of the corporate existence of the bank, in order that the Comptroller may have sufficient time to cause the special examination to be made, as required by section 3 of the act.

If any shares of the bank stand in the name of administrators, executors, trustees, or guardians, and it becomes necessary to have the vote of these shares to make up the majority required to authorize the amendment, duly certified copies of the legal appointment of such administrators, executors, trustees, or guardians should be sent to the Comptroller.

When stock voting for an amendment stands in the name of an assignee, there must be evidence showing that the shares of stock have been regularly transferred to him, as such assignee, on the books of the bank. When the amendment is signed by an attorney acting for shareholders, properly executed powers of attorney must be furnished.

Soon after the papers, satisfactorily executed, have been filed in his office, the Comptroller will order the special examination required by section 3 of the act.

This examination must be paid for by the bank, and if the report is favorable, the Comptroller will then issue his certificate of extension. After the extension has been granted, the law requires that all circulating notes issued to the bank after the date at which the new period of succession begins, shall be of different devices from those issued before, and this necessitates the procuring of new plates, which will be prepared at the expense of the bank, which will be \$50 for each plate of two impressions, and \$75 for each plate of four.

A blank to enable banks to order the preparation of plates for and the printing of new circulation will be furnished, and the order should be made out and sent with the application for extension.

The only plates now prepared are as follows:

1. Four impressions of \$5, costing \$75.
2. Three impressions of \$10, and one impression of \$20, costing \$75.
3. One impression of \$50, and one of \$100, costing \$50.

No transfers of bonds are necessary, as the extended association is, in all respects, identically the same as before extension, and is merely placed in the same position as if the law had allowed it, at the outset, forty years from the date of its organization, of which twenty have expired. The new circulating notes will be issued as the old come in, by the usual course of redemption, until the end of three years from the date of extension, when the law requires the bank to deposit lawful money for the redemption of such portion of the old circulation as may then remain outstanding. As new

circulation may be immediately issued in lieu of that for which lawful money is thus deposited, there need be little inconvenience on this account. All that is necessary is to see that the printing of circulation in blank is ordered in advance, so that it may be ready when wanted.

OFFICERS' BONDS.

Although the bank is the same bank after extension as before, it is necessary to renew the bonds of the officers, tellers, &c., as, if not done, it would be difficult to hold the sureties, as bondsmen signing before the extension could not be held to have contemplated the existence of the bank for a longer term than twenty years.

STOCKHOLDERS NOT DESIRING TO EXTEND THE ASSOCIATION.

Some stockholders may not vote for the extension, and some may wish to withdraw the amount of their stock. Section 5 of the act of July 12, 1882, provides what shall be done in such cases, as follows:

That, when any National banking association has amended its articles of association as provided in this act, and the Comptroller has granted his certificate of approval, any shareholder not assenting to such amendment may give notice in writing to the directors, within thirty days from the date of the certificate of approval, of his desire to withdraw from said association, in which case he shall be entitled to receive from said banking association the value of the shares so held by him, to be ascertained by an appraisal made by a committee of three persons, one to be selected by such shareholder, one by the directors, and the third by the first two; and in case the value so fixed shall not be satisfactory to any such shareholder, he may appeal to the Comptroller of the Currency, who shall cause a reappraisal to be made, which shall be final and binding; and if said reappraisal shall exceed the value fixed by said committee, the bank shall pay the expenses of said reappraisal, and otherwise the appellant shall pay said expenses; and the value so ascertained and determined shall be deemed to be a debt due, and be forthwith paid, to said shareholder, from said bank; and the shares so surrendered and appraised shall, after due notice, be sold at public sale, within thirty days after the final appraisal provided in this section.

The attention of bank officers is called to the following:

SUMMARY OF THE PRINCIPAL RESTRICTIONS AND REQUIREMENTS OF THE NATIONAL BANK ACT.

1. The corporate powers possessed by the National banking associations, and which they cannot exceed, are limited by the organic act which governs them, and are very carefully enumerated therein. They are, briefly, as follows:

First.—To adopt and use a corporate seal.

Second.—To have succession for twenty years, unless sooner voluntarily dissolved, or their franchise becomes forfeited by some violation of law.

Third.—To make contracts.

Fourth.—To sue and be sued, as fully as natural persons.

Fifth.—To elect and appoint directors, and by the directors to appoint a president, cashier, and other officers, and define their duties.

Sixth.—To adopt all necessary by-laws, not inconsistent with law.

Seventh.—To exercise by their boards of directors, or officers, *subject to law*, such incidental powers as are necessary to carry on the business of banking; by discounting and negotiating promissory notes and other evidences of debt; by receiving deposits; by buying and selling exchange, coin, and bullion; by loaning money on personal security; and by obtaining and issuing circulating notes.

These are the entire powers possessed by the National banks, and it has been judicially held that all powers not here enumerated are withheld. These enumerated powers, therefore, operate also as restrictions upon the banks. (Sec. 5136.)

2. One of the provisions appearing in the above grant of powers is that the National banks may loan money upon personal security only—that is, real estate may not be taken by them, directly or indirectly, as *original* security for any loan; the effect of which is to make them commercial institutions, and to discourage the loaning of money upon securities not readily convertible. (Sec. 5137.)

3. Mortgages on real estate may be taken, or real estate be conveyed to them by way of security for, or in satisfaction of debts previously contracted in good faith; or they may purchase the same at sales under judgments, decrees, or mortgages held by them. But all possession by them of such real estate, whether under mortgage, by purchase, or otherwise, is limited to five years.

4. They are required to have a paid-up capital of not less than \$100,000 each, and in cities of 50,000 inhabitants their capital must be not less than \$200,000 each. In the discretion of the Secretary of the Treasury, however, banks with not less than \$50,000 capital may be organized in places having less than 6,000 inhabitants. The design and effect of these provisions is to prevent, as far as possible, the establishment of feeble organizations, unequal to the wants of the communities in which they are located. (Sec. 5138.)

5. At least one-half of the authorized capital must be paid in before commencing business, and the remaining portion must be paid in at the rate of not less than one-fifth monthly from the time the association is authorized to commence business. (Sec. 5140.) Proper provision is made for enforcing payment of installments of capital stock subscribed, or, for making good any impairment of capital which may occur in the course of business. (Sec. 5141.)

6. The Comptroller is also authorized and required, before issuing his certificate of authority to any association to commence business, to ascertain if such association has in good faith complied with all the requirements of law, preliminary to its organization, and he may appoint a special commission for this purpose if thought necessary.

He must also obtain a sworn statement of the president and cashier and of a majority of the directors of the proposed association, setting forth all the facts properly bearing on this inquiry. (Sec. 5168.)

7. No increase or reduction of the authorized capital of an association can be made without the approval of the Comptroller being first obtained, and no increase is valid until the whole amount is actually paid and certified to under oath. (Secs. 5142 and 5143.)

8. Every director must be a citizen of the United States, and three-fourths of the directors of any association must be residents of the State, Territory, or District in which it is located. Each director must also, during his whole continuance in office, be the *bona-fide* owner of not less than ten shares of the capital stock of the association of which he is a director, which shares must not be hypothecated, or in any way pledged as security for any loan or debt. To all of which he must take oath. (Sec. 5146.)

9. Every director must also, immediately upon his election or appointment, make and transmit to the Comptroller an oath that he will faithfully administer the affairs of his association, and will not knowingly violate, or permit to be violated, any of the provisions of the National bank act. (Sec. 5147.)

10. The shareholders of every National bank are each made individually responsible, equally and ratably, and not one for another, for all contracts, debts, and engagements of such association, to the extent of their stock therein, at its par value, *in addition* to the amount invested in such shares; thus giving double security to the general creditors of these associations. (Sec. 5151.)

11. Each National bank having a capital of \$150,000 or less, before it is authorized to commence business, must have first deposited with the Treasurer of the United States an amount of interest-bearing, registered United States bonds, not less in any case than one-fourth of the paid-in capital of the bank (Sec. 8, act July 12, 1882), except that, by act of June 20, 1874, the maximum deposit of bonds required for any bank is \$50,000. These bonds are primarily held as security for the redemption of the circulating notes of the bank; but any excess in the value of the bonds above the amount of circulation to be redeemed becomes an added security, in the possession of the Government, applicable to the payment of claims of the general creditors of the association depositing them, should it become insolvent.

12. National banks are forbidden to make transfers or assignments of any of their assets or credits after an act of insolvency, or in contemplation thereof, with a view to the preference of one creditor to another; and any transfer or assignment so made is null and void. (Sec. 5242.)

13. Every association in the National system is required to receive

at par, for any debt or liability to it, the circulating notes of any and all other banks in the system, and these notes are also receivable by the Government for all taxes or other dues, except duties on imports, and are payable for all debts or demands owing by the Government, except interest on the public debt. These features give to the notes an additional value beyond that which they possess through a deposit of United States bonds. (Sec. 5196.)

14. One of the most invaluable features of the National banking system is that requiring each association to have at all times on hand an available cash reserve of specified proportions as compared with its deposits and circulation. The proportion required for banks located in the financial centers of the country is 25 per cent. of their deposits. For all other banks the required proportion is 15 per cent. of their deposits. The proportion of reserve to circulation is the same for all banks, namely, five per cent., which amount is to be at all times on deposit with the Treasurer of the United States, to be held and used by him in the redemption of their notes. This sum is also permitted to be counted as part of the required reserve on deposits. Most stringent means are placed at the disposal of the Comptroller for enforcing compliance by the banks with the requirements of the law relating to the maintenance of a cash reserve. (Sec. 5191.)

15. Equal in importance with the requirements as to a cash reserve are the provisions which compel the accumulation by each National bank of a surplus fund, to be set apart by it from time to time out of the profits of its business, and which fund may not be used by the bank for any purpose other than to meet and charge off losses in excess of its current earnings. These provisions require that each association shall, before making any dividend, carry to its surplus fund one-tenth part of its net profits since its last preceding dividend, until the same shall amount to 20 per cent. of its capital stock. It is further provided that no dividend shall ever be declared by any association to an amount greater than its undivided profits (not surplus) then on hand, deducting therefrom its losses and bad debts, and that if such losses shall equal or exceed its profits on hand other than surplus, no dividend shall be made. Careful provision is thus made for the steady growth of the surplus fund of each National bank, until its sum shall equal one-fifth of the capital of the association, thereby establishing a reserve fund against which it may charge any excess of losses over and above its other profits on hand, and thus preserve its capital stock unimpaired. (Sec. 5199.)

16. Another very important feature of the law is the requirement that detailed statements of the condition of each National bank, verified by the oath of its president or cashier, and attested by not less than three of its directors, shall, not less than five times in

each year, be made to the Comptroller, and also be published in the city or town where the bank is established; and to guard against the possibility of any bank fortifying itself, in advance of a known day for making a report, so as to make a good showing on that particular day, it is further provided that each report shall be for some *past* day, to be specified by the Comptroller, who, under the law, makes annually a report to Congress, containing a great number and variety of statistical tables compiled from the various reports of the banks, through the wide distribution of which full information concerning the banks and the working of the system is annually placed before the public. (Sec. 5211.)

17. The National banks are also required to make semi-annual reports to the Comptroller of their dividends declared, and the amount of their profits in excess of such dividends, which returns are also tabulated by him and the results presented to Congress and the country in his annual reports. Full means are provided for enforcing compliance by the banks with the provisions of law concerning both classes of reports here named, by authorizing a severe penalty for any failure or neglect to make and transmit the same. (Sec. 5212.)

18. In addition to the means for acquiring a knowledge of the condition of the banks furnished by the reports already mentioned, the law provides for their examination periodically by disinterested persons to be appointed by the Comptroller. These persons visit the banks, inspect their books of account, securities, and assets and liabilities generally, have power to examine their officers and directors under oath and inquire into all matters necessary to a full understanding of their actual, existing condition, and then make immediate and full report in writing of the results of such examination. This feature of the law is an invaluable one, operating not only as a restraint against irregular practices by any banks so disposed, but as a means of detecting them and preventing their recurrence. These examinations may be as frequent as is thought necessary, and their expense is borne by the banks themselves. (Sec. 5240.)

19. All necessary publicity as to the ownership of shares in any National banking association is secured by a provision requiring that a list of the names and residences of all its shareholders, and the number of shares held by each, shall be kept in the office where its business is transacted, and shall, during business hours, be subject to the inspection of any shareholder or creditor of the association, and of the officers authorized to assess taxes under State authority. A copy of such list, verified by oath, must also be transmitted to the Comptroller annually. (Sec. 5210.)

20. The National banks serve a very useful purpose, both to the Government and the public, more especially in localities where there

is not a sub-treasury, by acting, when so authorized by the Secretary of the Treasury, as depositories of public moneys and financial agents of the United States. For their services in this regard they receive no direct compensation, and are, moreover, required to give satisfactory security for the faithful performance of their duties and the safe custody and prompt payment of all public moneys intrusted to them, by a deposit with the Treasurer of a sufficient amount of United States bonds. (Sec. 5153.)

21. The National banks are prohibited from loaning to any person, company, corporation, or firm, an amount exceeding one-tenth part of their capital; and in estimating the liabilities of a company or firm the liabilities of its several members are to be included. They are thus, by law, made conservative in their management, and restrained from granting excessive loans, which would at least lessen their general usefulness to the communities in which they are situated, and perhaps impair their safety. (Sec. 5200.)

22. They are further prohibited from making any loan or discount whatever, on the security of the shares of their own capital stock, or from purchasing or holding the same unless to prevent loss upon a debt previously contracted in good faith. And, even in the latter case, they are not permitted permanently to hold or to cancel shares so obtained, but must, within six months from the date of their acquirement, sell or dispose of them at public or private sale. (Sec. 5201.)

23. They are also prohibited from becoming indebted or in any way liable to an amount exceeding that of their capital stock actually paid in, except on account (1) of their circulating notes; (2) their deposits or collections; (3) bills of exchange or drafts drawn against money actually on deposit to their credit or due to them; and (4) liabilities to their own stockholders for reserved profits. The purpose and effect of these provisions are to make the National banks lenders, and not borrowers of money. (Sec. 5202.)

24. They are further forbidden, either directly or indirectly, to pledge or hypothecate any of their circulating notes for the purpose of procuring money with which to pay in or increase their capital stock, or for use in their banking operations, or otherwise. This restriction effectually precludes the practice, which was common in some former State systems, of employing the circulating notes of an association in the increase of its own capital, or in furnishing capital for a new association, which practice has at times been carried to an extreme limit. (Sec. 5203.)

25. The National banks are restricted in the rate of interest which they may take, receive, or reserve, to the rate allowed by the laws of the State, Territory, or District in which they are located. (Sec. 5197.)

26. A system of redemption of the circulating notes of the National

banks is provided, whereby not only may they be readily converted into lawful money, but the mass of the circulation may be kept clean through the retirement of such portion as becomes worn or mutilated and the issue of new notes by the Comptroller, in their stead. This redemption is accomplished and compelled by requiring, first, that each National bank shall redeem its circulating notes at its own counter, at par, in lawful money, on demand; second, that the notes of all closed banks shall be redeemed by the Treasurer; third, that all worn, mutilated, or defaced National bank notes which are received by any assistant treasurer or designated depository of the United States shall be forwarded to the Treasury for redemption; and, fourth, by providing that when the notes of any associations, assorted or unassorted, are presented in sums of \$1,000, or any multiple thereof, to the Treasurer they shall be redeemed by that officer. The Government is indemnified for all redemptions made by it, either by the bonds which it holds, as in the case of insolvent banks, or by a deposit of lawful money which is required to be previously made by all other banks. (Sec. 3, act June 20, 1874.)

27. If a National bank fails to pay its circulating notes, the Comptroller is authorized to sell its bonds and provide for their payment. The Government is indemnified against any possible loss from its guaranty of the payment of such circulating notes, by having reserved to it by law a paramount lien upon all the assets of any association which defaults in the redemption of its notes, to make good any deficiency arising from the sale of its bonds. (Sec. 5230.)

28. The destruction of all mutilated notes and of notes of closed banks, redeemed by the Treasurer, is regulated by instructions of the Secretary, given in pursuance of law. All notes destroyed are previously counted by separate agents or representatives of the Secretary, the Treasurer, the Comptroller of the Currency, and the banks which issued the notes; they are effectually mutilated by clipping, and punching, to prevent their possible circulation should they by any remote chance pass out of the possession of the Treasury before destruction; they are, in the presence of each of the agents mentioned, placed in a triple-locked macerating machine, where they are immediately ground into pulp; and their destruction is certified to by all the agents, both upon proper books in the Treasury Department and in certificates sent to the banks of issue.

29. The banks are prohibited, under a severe penalty, from certifying any check drawn upon them, unless the person or company drawing the check has at the time on deposit with them an amount of money equal to that specified in the check. (Sec. 5208.)

30. They are also prohibited from making any loan on the security of United States or National bank notes, or from agreeing, for a consideration, to withhold the same from use, the purpose of the prohibition being to prevent the "locking up" of money by the National banks, in the interests of speculators. (Sec. 5207.)

31. The officers of National banks are required to make returns under oath to the Treasurer of the United States and to pay to him in semi-annual installments an annual duty of one per cent. upon the average amount of their circulating notes. This duty is in lieu of all other United States taxes:

32. National banks are liable to taxation by State authority, as it is expressly provided that nothing in the act shall prevent the shares of these associations from being taxed by the States as is other similar property, or shall exempt their real property from State, county, or municipal taxation, to the same extent as other real property. (Sec. 5219.)

33. Should the capital stock of any association become impaired in the course of business, by losses or otherwise, it must, within three months after the association shall have received notice from the Comptroller, be made good by assessment upon the shareholders *pro rata* for the amount of stock held by them; and during such impairment the Treasurer is required, upon notification from the Comptroller, to withhold the interest on all bonds held by him in trust for such association. The authorized capital of the banks is thus by law compelled to be kept always intact for the protection of their creditors. (Sec. 5205.)

34. When a National bank goes into voluntary liquidation, it must, within six months thereafter, deposit in the Treasury an amount of lawful money equal to its entire outstanding circulation, which circulation is thereafter redeemed by the Treasurer. Thus the banks, under existing law, derive no benefit from the accidental loss or destruction of any portion of their notes, such benefit inuring solely to the Government. (Sec. 5222, and sec. 6, act July 12, 1882.)

35. Should any bank become insolvent, the most ample powers are possessed by the Comptroller to take possession of such association, through a receiver to be appointed by him, and to proceed to collect its assets, and pay off, by dividends from time to time, the claims of its creditors. The note-holders are in such cases as secure as though the bank had remained solvent, the notes being protected by the bonds held by the Government; while the other creditors have as a protection, in addition to the assets of the bank, the individual liability of the shareholders before mentioned, together with the capital paid in, no part of which can be returned to the shareholders until all approved claims against the association shall have been paid. (Sec. 5234.)

36. Mention has several times been made herein of the ample means provided in the National bank act for enforcing compliance with its provisions, by the infliction of penalties for their violation or non-observance. All of these penalties are severe, and many of them summary, the principal ones being here enumerated:

I. For charging or exacting a usurious rate of interest, the whole

interest agreed to be paid is forfeited; or, if actually paid, twice its amount may be recovered back by the person paying the same. (Sec. 5198.)

II. For certifying any check, unless the person by whom the check is drawn has on deposit with the association an amount of money equal to that represented by the check, the bank may be immediately closed by the appointment of a receiver. (Sec. 5208.)

III. For every day, after five days, in which a National bank shall fail to make and transmit to the Comptroller any report of its condition called for by him, and for similar delay in transmitting to him the required proof of publication of such report, and also for every day, after ten days, in which a bank shall fail to transmit its semi annual report of dividends and earnings, a penalty of one hundred dollars is imposed. And if any association fails or refuses to pay the amount of such penalty when assessed and demanded, the Treasurer of the United States is authorized to retain it, upon the order of the Comptroller, out of the interest, as it may become due to the association, upon the bonds deposited to secure its circulation. (Sec. 5213.)

IV. If an association fails to pay the duties assessed upon its circulation, such duties may be reserved by the Treasurer out of the interest falling due upon its bonds. (Sec. 5217.)

V. The making of any loan upon the security of United States or National bank notes, or agreeing for a consideration to withhold the same from use—in other words, the “locking up” of money—is made a misdemeanor, punishable by a fine of \$1,000 and a further sum of one-third of the money so loaned; and the officers making the loan are subject to the further penalty of one-quarter of the money loaned. (Sec. 5207.)

VI. Embezzlement of the funds of an association by any of its officers, directors, or agents, or any false entry by any of them, in any book, statement, or report, with intent to injure or defraud the association or any other company or person, is punishable by imprisonment of not less than five nor more than ten years. (Sec. 5209.)

VII. If any officer or agent of an association whose charter has expired, knowingly reissues or puts into circulation any note, draft, check, or other security of such association, he is punishable by a fine of \$10,000 or by imprisonment of from one to five years, or by both such fine and imprisonment. (Sec. 5437.)

VIII. If the capital stock of any National bank falls below the minimum amount required by law, through the failure of any shareholder to pay the whole or any part of the amount of his subscription for such stock, and the deficiency in capital shall not be made good within thirty days thereafter, a receiver may be appointed to close up the affairs of the association. (Sec. 5141.)

IX. Whenever the lawful money reserve of a National bank falls below the limit required by law, and remains below such limit for thirty days after receiving notice from the Comptroller to make its reserve good, a receiver may be appointed and the bank closed. (Sec. 5191.)

X. A receiver may also be appointed for any association which fails to redeem its circulating notes at its own counter or at the Treasury, at par, on demand. (Sec. 5234.)

XI. If an association which accepts any shares of its own capital stock in order to prevent a loss upon a debt previously contracted in good faith (which is the only way in which such stock can be legally acquired by it) shall fail to sell such stock, at public or private sale, within six months thereafter, it may be closed by the appointment of a receiver. (Sec. 5201.)

XII. Whenever an association fails to pay up its capital stock as required by law, or an impairment of its capital occurs by losses or otherwise, and it shall not, within three months after receiving notice from the Comptroller, make good the deficiency by an assessment upon its shareholders, it may, unless it consents to go into liquidation, be placed in the possession of a receiver and its business closed. (Sec. 5205.)

37. If the directors of any National banking association knowingly violate, or knowingly permit any of its officers, agents or servants to violate, *any* of the provisions of the National bank act, all the rights, privileges, and franchises of the association become thereby forfeited; in addition to which, every director who participates in or assents to such violation is held personally and individually responsible for all damages sustained by any person in consequence thereof. (Sec. 5239.)

38. The act of February 26, 1881, requires that the reports of condition and dividend reports made to the Comptroller of the Currency shall be sworn to before a notary properly authorized and commissioned by the State in which such notary resides and the bank is located, or any other officer having an official seal, authorized in such State to administer oaths. Such officer administering the oath must not be an officer of the bank.

39. The act of July 12, 1882, in the 13th section provides a penalty for certifying checks before the amount of such checks shall have been entered to the credit of the drawer. Any officer, clerk, or agent of a National bank so certifying checks is made guilty of a misdemeanor, and is subject on conviction to a fine of not more than \$5,000 or imprisonment for not more than five years, or both in the discretion of the court.

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OFFICIAL REGULATIONS

REGARDING

UNITED STATES BONDS.

OFFICIAL REGULATIONS

REGARDING

UNITED STATES BONDS.

The following are the bonds which have matured and ceased to bear interest :

<i>Title of Loan and Date of Authorizing Act.</i>	<i>Denominations.</i>	<i>Rate of Interest.</i>	<i>When Redeemable or Payable.</i>
LOAN OF 1858:		Per	
June 14, 1858—Coupon....	\$1,000.....	ct.	
Registered..	\$5,000	5	Redeemable after fifteen years from January 1, 1859.
FIVES OF 1880:			
June 22, 1860—Coupon....	\$1,000, \$5,000.....	5	Redeemable after ten years from January 1, 1861.
Registered..	\$1,000, \$5,000		
SIXES OF 1880:			
Feb. 8, 1861—Coupon....	\$1,000.....	6	Payable after December 31, 1880.
Registered..	\$1,000, \$5,000, \$10,000		
OREGON-WAR LOAN:			
March 2, 1861—Coupon....	\$50, \$100, \$500.....	6	Redeemable twenty years from July 1, 1861.
SIXES OF 1881:			
July 17, and August 5, 1861—			
Coupon	\$50, \$100, \$500, \$1,000	6	Redeemable after June 30, 1881.
Registered..	\$50, \$100, \$500, \$1,000, \$5,000, \$10,000.		
FIVE-TWENTIES OF 1862:			
Feb. 25, 1862—Coupon	\$50, \$100, \$500, \$1,000	6	Redeemable after five and payable twenty years from May 1, 1862.
Registered..	\$50, \$100, \$500, \$1,000, \$5,000, \$10,000.		
SIXES OF 1881:			
March 3, 1863—Coupon	\$50, \$100, \$500, \$1,000	6	Redeemable after June 30, 1881.
Registered..	\$50, \$100, \$500, \$1,000, \$5,000, \$10,000.		
FIVE-TWENTIES OF 1864:			
March 3, 1864—Registered..	\$100, \$500, \$1,000, \$5000.	6	Redeemable after five and payable twenty years from November 1, 1864.
TEN-FORTIES:			
March 3, 1864—Coupon	\$50, \$100, \$500, \$1,000	5	Redeemable after ten and payable forty years from March 1, 1864.
Registered..	\$50, \$100, \$500, \$1,000, \$5,000, \$10,000.		
FIVE-TWENTIES OF 1864:			
June 30, 1864—Coupon	\$50, \$100, \$500, \$1,000	6	Redeemable after five and payable twenty years from November 1, 1864.
Registered..	\$50, \$100, \$500, \$1,000, \$5,000, \$10,000.		
FIVE-TWENTIES OF 1865:			
March 3, 1865—Coupon	\$50, \$100, \$500, \$1,000	6	Redeemable after five and payable twenty years from November 1, 1865.
Registered..	\$50, \$100, \$500, \$1,000, \$5,000, \$10,000.		

<i>Title of Loan and Date of Authorizing Act.</i>	<i>Denominations.</i>	<i>Rate of Interest.</i>	<i>When Redeemable or Payable.</i>
CONSOLS OF 1865: March 3, 1865—Coupon	\$50, \$100, \$500, \$1,000	Per	
Registered..	\$50, \$100, \$500, \$1,000, \$5,000, \$10,000.	ct.	
CONSOLS OF 1867: March 3, 1865—Coupon	\$50, \$100, \$500, \$1,000	6	Redeemable after five and payable twenty years from July 1, 1865.
Registered..	\$50, \$100, \$500, \$1,000, \$5,000, \$10,000.	6	Redeemable after five and payable twenty years from July 1, 1867.
CONSOLS OF 1868: March 3, 1865—Coupon	\$50, \$100, \$500, \$1,000	6	Redeemable after five and payable twenty years from July 1, 1868.
Registered..	\$500, \$1,000, \$5,000, \$10,000.	6	
FUNDED LOAN OF 1881: July 14, 1870, and January 20, 1871—Coupon	\$50, \$100, \$500, \$1,000	5	Redeemable after May 1, 1881.
Registered.....	\$5,000, \$10,000, \$50, \$100, \$500, \$1,000, \$5,000, \$10,000, \$20,000, \$50,000.		
SIXES OF 1881: July 17 and August 5, 1861, (continued under Department Circular No. 42, dated April 11, 1881)			
Registered.....	\$50, \$100, \$500, \$1,000, \$5,000, \$10,000.	3½	Redeemable at the pleasure of the Government.
SIXES OF 1881: March 3, 1863, (continued under Department Circular No. 42, dated April 11, 1881)—Registered.....	\$50, \$100, \$500, \$1,000, \$5,000, \$10,000.	3½	Redeemable at the pleasure of the Government.
FUNDED LOAN OF 1881: July 14, 1870, and Jan. 20, 1871, (continued under Department Circular No. 52, dated May 12, 1881)			
Registered.....	\$50, \$100, \$500, \$1,000, \$5,000, \$10,000, \$20,000, \$50,000.	3½	Redeemable at the pleasure of the Government.

COUPON BONDS.

Coupon bonds of the United States are payable to bearer, and pass by delivery, without indorsement. They are convertible into registered bonds of the same loan, but the law does not authorize the conversion of registered into coupon bonds.

Coupon bonds forwarded to the Department for exchange into registered bonds should be addressed to the SECRETARY OF THE TREASURY, Division of Loans and Currency.

There is no expense attending the exchange at the Department; but when bonds are sent by express the charges must be paid by the party transmitting them.

FORM OF LETTER FOR CONVERSION OF COUPON BONDS INTO REGISTERED BONDS.

_____, _____, _____, 18—.
 HON. SECRETARY OF THE TREASURY,
Washington, D. C.

SIR: Herewith I send \$—— U. S: coupon bonds of the act of July 14, 1870, — per cent. loan of —; which please exchange into registered bonds in the name of ———.

Please send the new bonds to the subscribed address.

Mail checks for the interest to ———, ———, ———.

Very respectfully,

_____,
 _____.

REGISTERED BONDS.

Registered bonds of the United States differ from coupon bonds in the following respects, namely: (1) They have inscribed or expressed upon their face the names of the parties who own them, denominated *payees*; (2) they are payable only to such payees or their assigns; and (3) the property or ownership in them can be transferred only by assignment. For the purpose of assigning them, there are forms printed on the backs of the bonds, together with directions to be followed in the execution of such assignments.

A ledger account is opened in the Department with each holder of one or more registered bonds; and in this account each bond is fully described. All recognized transfers must be made upon the loan-books in the Office of the Register of the Treasury.

ASSIGNMENT OF BONDS.

The directions printed on the backs of the bonds should be carefully followed in the execution of assignments, and the name of the assignee should be written plainly in the space left for that purpose. Assignments *must be dated* and properly acknowledged.

If a bond is to be divided among two or more parties, their names and the amount to each should be stated in the assignment. If only a part of a bond is assigned, a new issue for the remainder will be made to the former payee of the whole bond: *Provided, however*, That the amount assigned shall correspond with one or more of the denominations in which the bonds are issued.

Registered bonds should not be assigned in blank, as such assignment would make them payable to bearer and render them available to any holder thereof; in other words, under an assignment in blank the title to the bonds would pass by delivery.

A detached assignment should never be resorted to, except when

the blank form for an assignment which is printed on the bond shall have been already used; and in this case only when there shall not be sufficient space on the back of the bond for another assignment.

The payee should sign his name to the assignment as the name is written on the face of the bond. If the bond be issued to a firm, the assignment must be subscribed in the name of the firm by a member thereof who shall be possessed of authority to sign for the firm, of which authority the officer witnessing the signature must be satisfied; if issued to joint owners, co-trustees, executors, administrators, or guardians, each person must sign for himself; if to a corporation or company, the official character of the person executing the assignment, and the authority of such person to dispose of the bond or bonds in question, should be duly verified by vote or resolution of the board of directors of the corporation or company, certified under its seal. Where such officer is authorized by virtue of his office to execute the assignment, a certificate, under seal, of this fact and of his election to the office, and that he still holds and exercises such office, must be furnished, together with a certified copy of the charter or by-laws of such corporation or company, showing the authority claimed thereunder.

All such evidence of authority will be placed on file in the Department, and if general and permanent in its character, need not be reproduced in subsequent transactions under the same power, if proper reference be made thereto.

ASSIGNMENTS BY REPRESENTATIVES AND SUCCESSORS.

In case of death or successorship, the representative of the deceased person, or the successor, must furnish official evidence of such decease or successorship, and of his own appointment, authority or power. An executor or administrator may assign bonds standing in the name of the deceased person in whose stead such executor or administrator shall be acting. Where there are two or more legal representatives, all must unite in the assignment, unless by a decree of court or testamentary provision some one or more of them is or are designated and empowered to dispose of the bonds. If the bonds had been held by the deceased in the capacity of a fiduciary or trustee, a court having jurisdiction must appoint a successor, who should execute the assignment in order to secure the transfer or payment of the bonds.

An executor, administrator, trustee, guardian, or attorney, cannot assign bonds to himself, unless he be specially authorized to do so by a court possessing jurisdiction of the matter.

FOREIGN SUCCESSORSHIP ASSIGNMENTS.

Where a payee, at the time of his death, was a resident of a for-

eign country, the party claiming to direct and execute the transfer must furnish an exemplified copy of the will or other instrument conveying the requisite authority, duly certified under the hand and seal of the proper officer, attested by the certificate of a United States minister, chargé, consul, vice-consul, or commercial agent, or, if there be none such accessible (which fact shall, in such case, be certified), by that of a notary public, to the effect that such exemplified copy is executed and granted by the proper tribunal or officer, and is in due form and according to the laws of that country. The assignment should be executed as hereinbefore directed.

ASSIGNMENTS BY ATTORNEY.

Persons entitled to assign bonds may appoint for that purpose an attorney, who, by virtue of the authority so conferred, can execute the assignment in the same manner as provided for the constituent.

No officer of the Treasury of the United States should be selected as such attorney.

Powers of attorney authorizing the assignment of bonds should be sent, for record, to the Register of the Treasury.

FORM OF POWER OF ATTORNEY.

KNOW ALL MEN BY THESE PRESENTS:

That I, _____, do hereby appoint _____ my attorney to assign any and all United States bonds now standing (*or which may hereafter stand*) in my name on the books of the Treasury Department, granting to said attorney full power to appoint one or more substitutes for that purpose, hereby ratifying and confirming all that may be lawfully done by virtue hereof.

Witness my hand and seal this the _____ day of _____, A. D. 18____. [SEAL.]

Executed before me this the _____ day of _____, A. D. 18____.

[Official Seal.]

NOTE.—To be verified in accordance with instructions contained under head of acknowledgments.

FORM OF AUTHORITY BY RESOLUTION.

At a regular meeting of the board of directors of the _____, of _____, _____, held _____, 18____, it was, on motion,

“*Resolved*, That A. B., president, and C. D., cashier, are, or either of them is, hereby authorized and empowered to assign any and all United States bonds now standing (*or which may hereafter stand*) in the name of this bank [*or institution*].”

I certify that the above is a true copy from the minutes.

[Corporate Seal.]

Secretary of the Board.

NOTE.—This resolution should be certified by some officer of the institution other than the one empowered to assign the bonds.

It is recommended that resolutions be adopted only at *regular* meetings. But when passed at a special meeting the certificate may be as follows:

We certify that at a *special* meeting of the board of directors of ———, duly held at ———, on the ——— day of ———, at — o'clock — M., 18—, the foregoing resolution was adopted, and is now in full force.

And we certify that notice was duly given, personally, to all the members of the said board of directors of the time and place of said meeting, and of the object thereof for more than ——— days prior thereto, and in time to enable all to attend said meeting; and that at such meeting so held a quorum of all the members of said board was present and voted for the adoption of said resolution.

FORM OF AUTHORITY UNDER BY-LAWS.

At the annual meeting of the stockholders of the ——— ——— ———, of ———, ———, held ———, 18—, ——— was duly elected president, and ——— was duly elected cashier; and as such they are jointly or severally empowered by the by-laws (a certified copy of which is hereto annexed) to sell and assign any and all United States bonds now standing (*or which may hereafter stand*) in the name of this bank [*or institution*].

—————, Secretary.

[Seal of bank *or* institution.]

ACKNOWLEDGMENTS

Of assignments, when not made at this Department, must be made either before an Assistant Treasurer of the United States, a United States judge or district attorney, clerk of a United States Court, collector of customs or internal revenue, or president or cashier of a National bank.

A notary public is authorized to take acknowledgments only on the Pacific Railroad bonds and on the three-per-cent. bonds of 1882. The witnessing officer should append his official title and affix his seal of office; if he have one; if he have no seal of office, he should certify such to be the fact. The president or cashier of a National bank must append the title and affix the seal of the bank. The impress of the seal must in every case be made upon the bond.

FOREIGN ACKNOWLEDGMENTS

May be made before a United States minister, chargé, consul, vice-consul, or commercial agent. A notary public, or other competent officer, in a foreign country may take acknowledgments; but his

official character and jurisdiction must be properly verified.* The official seal, where there is one, should in all cases be affixed, as per foregoing direction; and where there is none, this fact should be made known and attested.

EXECUTION OF POWERS.

Powers of attorney for the transfer of bonds must be acknowledged in the presence of some of the officers authorized to take acknowledgments of assignments; and where such officer has an official seal, it must be affixed; where he has none, he should so state.

POWERS OF SUBSTITUTION

Must be executed and acknowledged in the same manner as powers of attorney, and should likewise follow the same general form.

TRANSMISSION OF BONDS.

When registered bonds are properly assigned, they should be transmitted to the Register of the Treasury for re-issue, and should be accompanied by a letter of explicit instructions, stating the amount enclosed, the loan to which the bonds belong, the denominations of the bonds desired in exchange therefor, the name and residence of each assignee and the post-office address to which it is desired the interest-checks shall be mailed.

When bonds of different loans are forwarded in one remittance a separate letter of instructions should accompany the bonds of each loan.

When coupon and registered bonds are transmitted at the same time, the former should be sent to the Secretary of the Treasury and the latter to the Register of the Treasury.

FORM OF LETTER TRANSMITTING REGISTERED BONDS FOR TRANSFER.

HON. REGISTER OF THE TREASURY, _____, _____, _____, 18—.
Washington, D. C.

SIR: Herewith you will receive \$ — U. S. registered bonds of the — per cent. loan of —, which please transfer, as per assignment, to —, of —.

Please send the new bonds to the subscribed address.

Mail checks for the interest to —, —, —.

Very respectfully, _____.

NEW BONDS.

Registered bonds received for transfer are canceled, and new bonds in their stead are issued in the name of the assignee. These bear interest from the first day of the quarter or half-year (as their interest term may run) in which the transfer shall have been made.

* See under head "Foreign successorship assignments."

As a rule returns are made on the same day that the bonds are received, and made invariably by registered mail, unless otherwise instructed. When bonds are sent, or returned, by express, the entire expense thus incurred must be borne by the party desiring the transfer.

NO FEES

Will be charged by a United States minister, chargé, consul, vice-consul, or commercial agent, for witnessing and certifying an assignment of, or power to assign, bonds or collect interest thereon. No charge is made by the Department for transferring registered bonds.

INTEREST ON REGISTERED BONDS.

The interest on registered bonds of the existing loans falls due upon the following dates respectively:

Currency sixes, Pacific Railroad.....January 1; July 1.
Four-and-a-half-per-cent. funded loan of 1891..March 1; June 1; Sept. 1; Dec. 1.
Four-per-cent. consols of 1907.....January 1; April 1; July 1; October 1.
Three-per-cent. funded loan of 1882.....Feb. 1; May 1; Aug. 1; Nov. 1.

Interest on registered bonds of the above-described loans is paid by checks drawn at this Department. These checks will be sent by mail when the post-office address is known; when this is not known, they will be held by the Treasurer of the United States until called for by the payees thereof.

The checks are payable, when properly indorsed, on presentation at the United States Treasury or at the office of any Assistant Treasurer of the United States.

Holders of these bonds should notify the Register of the Treasury of any change in their post-office address at least fifteen days before the interest falls due; and in case of the appointment of an attorney to indorse the interest-checks, notice of this fact should likewise be given to the Register. Such holders should also transmit to the First Auditor of the Treasury, all powers of attorney authorizing the indorsement of interest-checks, and advise him, specifically, at which of the offices referred to above it is desired that the interest-checks, under such powers, shall be paid.

CLOSING OF TRANSFER-BOOKS.

For the purpose of preparing the interest-schedules, the transfer-books are closed during the month immediately preceding the date of payment of the interest.

If bonds forwarded for transfer be not received prior to or upon the day fixed for closing the transfer books, the transfer will not be effected until after the reopening of the books; and consequently the interest for that quarter or half-year (as the interest term may be) will be declared in favor of the parties whose names appear upon the face of the old bonds, and to them the assignees must look for any interest claimed.

FORM OF POWER OF ATTORNEY TO COLLECT INTEREST-CHECKS.

Know all men by these presents, that ———, of ———, do appoint ——— attorney to receive from the proper officer and to indorse checks for interest* in ——— name on the books of the Treasury Department of the United States; granting to said attorney power to appoint one or more substitutes for the purposes herein expressed; hereby ratifying and confirming all that may lawfully be done in virtue hereof.

Witness ——— hand- and seal- this ——— day of ———, 18—.

—————. [L. S.]

—————. [L. S.]

Signed, sealed and acknowledged in the presence of—

—————.

(To be acknowledged as directed below.)

EXECUTION OF POWERS OF ATTORNEY TO INDORSE INTEREST-CHECKS.

Powers of attorney must be acknowledged either before the Treasurer or an Assistant Treasurer of the United States, a United States judge, United States District Attorney, clerk of United States Court, collector of customs, collector of internal revenue, president or cashier of a National bank, or a notary public. If in a foreign country, powers must be acknowledged either before a United States minister, chargé, consul, vice-consul, commercial agent or notary public. If before the latter, his official character and the genuineness of his signature must be properly verified.

The acknowledging officer must add his official designation, residence, and seal, if he have one: if he have no seal of office, he should certify such to be the fact.

Powers of attorney and testamentary evidence designed as authority to collect interest-checks should be filed with the First Auditor of the Treasury.

FORM OF AUTHORITY BY RESOLUTION FOR THE INDORSEMENT OF INTEREST-CHECKS.

At a regular meeting of ———, held at ———, in the State of ———, on the ——— day of ———, 18—. a quorum being present, it was, on motion,

Resolved, That ——— be, and is hereby, authorized to receipt for and to indorse checks for interest due, or to become due, on all United States bonds registered in the name of ——— on the books of the Treasury Department, with power to

* When intended to be special, insert [due on the ——— day of ———, 18—, on all bonds standing in ———.]

* When intended to be general, insert [now due and which may hereafter accrue on all bonds standing, or which may hereafter stand, in ———.]

appoint one or more substitutes for the purposes herein expressed, until such authority is officially revoked, and notice of revocation is properly given to the Treasury department.

A true copy of the minutes.

(Signed)

_____, *President.*

[SEAL.] Attest:

_____, *Secretary.*

NOTE.—Where the society or institution has no *seal*, it will be requisite to acknowledge the instrument before a notary or some other competent officer having an official seal. If the president, cashier, secretary, or treasurer be authorized to indorse the checks, the instrument must be certified by an officer other than the one empowered to make the indorsement.

The First Auditor of the Treasury should be advised where interest-checks indorsed by attorneys will be presented for payment.

INTEREST TO JOINT HOLDERS OF REGISTERED BONDS.

Interest will be paid to any one of several joint holders, or co-trustees, executors, administrators, or guardians; but in the execution to a third party of a power to collect interest-checks all **must** join. In case of the death of any of such joint holders, co-trustees, &c., the survivor or survivors will be recognized as having full authority, upon due proof of such death and survivorship.

PAYMENT OF INTEREST ON UNITED STATES REGISTERED BONDS INSCRIBED IN THE NAMES OF MINORS.

The following synopsis of the decision of the First Comptroller of the Treasury, of February 4, 1881, respecting the payment of interest on United States registered bonds inscribed in the names of minors, is published for the information and guidance of the officers of this Department:

1. When Government bonds are registered in the names of infants, interest-checks issued in payment of interest thereon will be delivered and paid only to the proper guardian of such infants, when the Secretary of the Treasury has been notified of such infancy.

2. Neither the father nor mother of an infant has the right, as a general rule, to indorse or collect such interest-checks.

3. The guardian of an infant, in order to indorse and collect interest-checks in favor of his ward, is required to file with the first Auditor evidence (1) of guardianship, (2) of his authority being in force, and (3) of the identity of his ward as the payee in the bonds.

4. The Government is not liable to refund to an infant, on his arriving at the age of majority, money paid to him on his indorse-

ment of interest-checks during minority, when the Secretary of the Treasury, had not been notified of the fact of infancy.

(Department Circular No. 6, dated February 7, 1881.)

UNCLAIMED INTEREST.

The interest on registered bonds of the loans authorized previously to the funded loans (Act of July 14, 1870) which has been returned to the Treasury as unclaimed, can be collected only in person or by attorney at the office of the Treasurer of the United States, in Washington.

For the convenience of the public, and to save charges, powers to collect specified unclaimed interest may be made in favor of the CHIEF OF THE DIVISION OF LOANS AND CURRENCY of the Secretary's Office, under authority of the following order :

"TREASURY DEPARTMENT.

"Office of the Secretary, May 1, 1879.

"ORDERED: That from and after this date, the *pro forma* receipt on the books of this Department for interest on registered bonds of the United States, due claimants who do not desire to employ resident attorneys, may be signed by the CHIEF OF THE DIVISION OF LOANS AND CURRENCY of this office, or, in his absence, by the ACTING CHIEF of said Division, as attorney for the claimants.

"That checks in payment of such interest drawn by the Treasurer of the United States in favor of the claimants be transmitted to their address by the officer acting as attorney.

"JOHN B. HAWLEY,

"Acting Secretary."

TRANSLATIONS.

Powers of attorney, and all other legal documents executed in the United States must be in the English language. If executed abroad in any other language, such powers must be accompanied by an accurate translation into English, and by a sworn certificate of the person who made such translation, properly acknowledged before a notary public or other competent officer having a seal, to the effect that the translation is correct and complete.

LOST REGISTERED BONDS.

In case of the loss of registered bonds, the Secretary of the Treasury should be promptly notified, in order that a caveat may be entered against the transfer of the missing bonds, on the books of the Department.

FORM OF REQUEST FOR CAVEAT.

Hon. SECRETARY OF THE TREASURY, _____, _____, 18—.

Washington, D. C.

SIR: The registered bonds described below, standing in my name,

were stolen from the undersigned on or about the — of — last. Please enter a *caveat* against their transfer:

No. —, for \$ —, Act of —, 18—. — per cent., and No. —, for \$ —, Act of —, 18—. — per cent.

Very respectfully,

_____, _____.

LOST COUPON BONDS, NOTES AND COUPONS.

In consequence of the increasing trouble, wholly without practical benefit, arising from notices which are constantly received at the Department, respecting the loss of coupon bonds, which are payable to bearer, and of Treasury notes issued and remaining in blank at the time of loss, it becomes necessary to give this public notice, that the Government cannot protect, and will not undertake to protect, the owners of such bonds and notes against the consequences of their own fault or misfortune.

Hereafter all bonds, notes, and coupons, payable to bearer, and Treasury notes issued and remaining in blank, will be paid to the party presenting them in pursuance of the regulations of the Department, in the course of regular business; and no attention will be paid to caveats which may be filed for the purpose of preventing such payment.

(Department Circular of April 27, 1867.)

RELIEF IN CASES OF DESTROYED AND DEFACED BONDS AND LOST REGISTERED BONDS OF THE UNITED STATES.

The following are the provisions of the Revised Statutes of the United States, and the regulations thereunder, concerning relief in cases of bonds of the United States which have been defaced, destroyed or lost:

DUPLICATES FOR DESTROYED OR DEFACED BONDS.

SEC. 3702. Whenever it appears to the Secretary of the Treasury, by clear and unequivocal proof, that any interest-bearing bond of the United States has, without bad faith upon the part of the owner, been destroyed, wholly, or in part, or so defaced as to impair its value to the owner, and such bond is identified by number and description, the Secretary of the Treasury shall, under such regulations and with such restrictions as to time and retention for security or otherwise as he may prescribe, issue a duplicate thereof, having the same time to run, bearing like interest as the bond so proved to have been destroyed or defaced, and so marked as to show the original number of the bond destroyed, and the date thereof. But when such destroyed or defaced bonds appear to have been of such a class or series as has been or may, before such application, be called in for redemption, instead of issuing duplicates thereof,

they shall be paid, with such interest only as would have been paid if they had been presented in accordance with such call.

SEC. 3703. The owner of such destroyed or defaced bond shall surrender the same, or so much thereof as may remain, and shall file in the Treasury a bond in a penal sum of double the amount of the destroyed or defaced bond, and the interest which would accrue thereon until the principal becomes due and payable, with two good and sufficient sureties, residents of the United States, to be approved by the Secretary of the Treasury, with condition to indemnify and save harmless the United States from any claim upon such destroyed or defaced bond.

DUPLICATES FOR LOST REGISTERED BONDS.

SEC. 3704. Whenever it is proved to the Secretary of the Treasury, by clear and satisfactory evidence, that any duly registered bond of the United States, bearing interest, issued for valuable consideration in pursuance of law, has been lost or destroyed, so that the same is not held by any person as his own property, the Secretary shall issue a duplicate of such registered bond, of like amount, and bearing like interest, and marked in the like manner as the bond so proved to be lost or destroyed.

SEC. 3705. The owner of such missing bond shall first file in the Treasury a bond in the penal sum equal to the amount of such missing bond, and the interest which would accrue thereon until the principal thereof becomes due and payable, with two good and sufficient sureties, residents of the United States, to be approved by the Secretary of the Treasury, with condition to indemnify and save harmless the United States from any claim because of the lost or destroyed bond.

Parties presenting claims on account of a coupon or registered bond of the United States which has been destroyed, wholly or in part, or on account of a registered bond which has been lost, will be required to present evidence showing:

1st. The number, denomination, date of authorizing Act, and rate of interest of such bond, whether coupon or registered, and, if registered, the name of the payee. In the case of a registered bond, it should also be stated whether it had been *assigned or not* previous to, or since, the alleged loss or destruction, and, if assigned, by whom, and whether assigned in blank or to some person specifically by name; and if assigned in the latter manner, the name of the assignee should be given.

2d. The time and place of purchase, of whom purchased, and the consideration paid.

3d. The place of deposit of the missing bond; whether or not any person or persons, other than the owner, had access thereto; and in the event of its having been accessible to other parties,

their affidavits, in addition to that of the owner, should be furnished, showing their knowledge of the existence of the bond, and of the fact of its loss or destruction.

4th. The material facts and circumstances connected with the loss or destruction of the bond.

5th. It should be shown *by the affidavits of credible persons*, if practicable by United States officers, that the statements of the claimant, as set forth in his affidavit, are worthy of the confidence of this Department, and that he is the identical person named in the application.

In all cases the evidence should be as full and clear as possible, that there may be no doubt of the good faith of the claimant. Proofs may be made by affidavits duly authenticated, and by such other competent evidence as may be in the possession of the claimant.

GENERAL FORM OF AFFIDAVIT.

Personally appeared before me, a notary public in and for the city of ———, county of ———, and State of ———, the subscriber, ———, of ———, county of ———, and State of ———, who, being duly sworn according to law, deposes and says, that ——— is the lawful owner of the following-described registered bonds of the United States, viz.:

No. ———, for \$——, Act of ———, 18—, ——— per cent.; and No. ———, for \$——, Act of ———, 18—, ——— per cent.; registered in ——— name on the books of the Treasury Department ———, 18—; that no assignment or transfer of said bonds [or either of them] has been made or authorized by ——— or ——— attorney, either in blank or by a specific assignment, or in any manner whatever; that said bonds have not, nor has either of them, by hypothecation, pledge, loan, or otherwise, passed from the custody or control of said ——— with [his or her] knowledge or consent; that the said bonds were stolen from ———, the said ———, at ———, on the ———, by some person or persons unknown to ———; and that due diligence has been exercised in endeavoring to recover the said bonds, without success. [State what has been done.]

_____ of _____, _____.

Sworn to and subscribed before me, this the ——— day of ———, A. D., 18—; and I certify that said ——— is personally well known to me to be the identical person mentioned in the foregoing affidavit.

_____, Notary Public.

[NOTARIAL SEAL.]

Affidavits and other evidence pertaining to the claim should be transmitted to the SECRETARY OF THE TREASURY. Upon receipt of such documentary evidence it will be referred to the First Comptroller of the Treasury for his opinion as to its sufficiency. The ap-

plicant will be advised of the decision as soon as it is reached ; IF IT BE FAVORABLE TO SUCH APPLICANT, a blank indemnity bond will be forwarded to him for execution ; and when this indemnity bond shall have been duly executed, returned to the Department, and approved by the First Comptroller and the Secretary, the relief desired will be granted.

A duplicate in lieu of a lost registered bond will not be issued within six months from the time of the alleged loss.

The interest on an uncalled registered bond will be paid to the payee thereof, even though the bond has been lost or destroyed.

These regulations do not apply in any way to coupon bonds which have been lost, or to coupons lost or destroyed which have been detached from the bonds to which they belonged, as no relief, in such cases can be granted under existing laws.

DESTROYED COUPONS.

In reply to an inquiry whether Section 3702 of the Revised Statutes, above cited,* authorizes the Secretary of the Treasury to give relief in cases where coupons previously detached from bonds have been destroyed, the Attorney-General of the United States has given the following opinion :

DEPARTMENT OF JUSTICE,

January 29, 1878.

HON. JOHN SHERMAN,

Secretary of the Treasury.

SIR: Referring to your letter of the 1st ultimo, in which is presented for my consideration the question whether section 3702 of the Revised Statutes authorizes the Secretary of the Treasury to give relief in cases where coupons, previously detached from the bonds, have been destroyed, I have the honor to reply :

The provisions of that section do not, in my opinion, extend to coupons which have been destroyed or defaced after their separation from the bonds to which they were attached.

By the first clause of the section, in case of the total or partial destruction of an interest-bearing bond of the United States, or in case such a bond has been so defaced as to impair its value to the owner, the Secretary of the Treasury is authorized, under certain conditions, to "issue a duplicate thereof," &c. The language of this clause limits the authority thereby conferred to the mere issuing of duplicate *bonds* in the cases mentioned.

So long as coupons remain attached to the bonds with which they were issued, they must be deemed to constitute parts thereof; and, therefore, if one or more coupons, whilst attached to a bond of the above description, become destroyed or defaced, this would be a case of partial destruction or defacement of the bond and fall

* See page 334 "Destroyed and Defaced Bonds," &c.

within the statute. But after the severance of the coupons from the bonds, they can no longer be regarded as forming parts thereof. They then cease to be incidents even of the bonds, and become, in fact, independent claims, possessing the essential attributes of commercial paper. (*Clark v. Iowa City*, 20 Wall. 589.)

Accordingly; should coupons, after having been detached by the holder of the bonds, be transferred to another person in whose hands they afterwards become destroyed or defaced, the latter would clearly have no right to any relief which the Secretary is by the said clause authorized to give, since the authority of the Secretary, except in cases falling within the second or last clause of section 3702 is confined to the issuing of duplicate *bonds*, which the detached coupons thus destroyed or defaced are not. Yet the result would be the same should such detached coupons not be transferred by the holder of the bonds, but become destroyed or defaced while both they and the bonds are still owned by him; as it is by the severance of the coupons from the bonds that the former cease to be parts of the latter, not by any change of ownership which may subsequently ensue.

By the second or last clause, to which I have above adverted, when any *such destroyed or defaced bond* belongs to a class or series that has been or may, before the application, be called in for redemption, in this case the Secretary is authorized, instead of issuing a duplicate thereof, to pay the bond, with such interest as would have been paid if it had been presented in accordance with the call. This clause is not more comprehensive than the other, but has precisely the same scope in respect to the subject matter of relief; in other words, it extends solely to destroyed or defaced interest-bearing *bonds*. The mode of relief only is varied thereby in cases where such bonds are of a class or series already called in for redemption.

While the provisions of section 3702 were enacted with a view to enable persons who may sustain loss by the destruction or damage of Government securities to obtain relief without resorting to Congress for special legislation, the authority conferred upon the Secretary of the Treasury by that section to afford relief must, nevertheless, be exercised in strict conformity with those provisions. He is not at liberty to give relief, in either of the modes provided, in cases which do not fairly come within the terms of the statute.

I am, sir, very respectfully,

CHAS. DEVENS,

Attorney-General.

CALLED BONDS.

All United States called bonds, forwarded for redemption, should be addressed to the SECRETARY OF THE TREASURY, Division of

Loans and Currency. When registered bonds are so forwarded, they should be assigned to "the SECRETARY OF THE TREASURY, for redemption." *Assignments must be dated and properly acknowledged as prescribed in the note printed on the back of each bond.*

Where checks in payment of registered bonds are desired in favor of any one but the payee, the bonds should be assigned to the "Secretary of the Treasury for redemption for account of"—(here insert the name of the person or persons to whose order the check should be made payable).

RÈGULATIONS IN REGARD TO COUPONS DETACHED FROM CALLED BONDS.

When coupons, detached from bonds that have been called in for redemption, are presented for payment, the Department will pay such portion of the interest specified in such coupons as had accrued at the day fixed in the call for the redemption of the bonds, and no more, unless the party presenting them claims payment of their nominal value, in which case the Department will retain the coupons until the bonds from which they were detached shall have been presented, and the conflicting claims adjusted.

When a called bond is presented for redemption, from which a coupon maturing after the day fixed in the call for such redemption, shall have been detached, the nominal value of such coupon shall be deducted from the sum due upon the bond, unless the coupon shall have been paid as above; the sum thus deducted to be retained to await the presentation of the coupon and a settlement.

All correspondence in relation to bonds that have been called in for redemption, or coupons belonging thereto, should be addressed to the "Loan Division," Secretary's Office.

(Department Circular No. 48, dated May 9, 1872.)

EXEMPTION OF UNITED STATES BONDS FROM TAXATION.

Section 3701 of the Revised Statute provides as follows: "All stocks, bonds, Treasury notes, and other obligations of the United States, shall be exempt from taxation by or under State or municipal or local authority." This section makes the exemption from taxation binding only upon "State or municipal or local authority"; but according to the express terms of the Act of Congress of July 14, 1870, the bonds and the interest thereon of the funded loans which are thereby authorized—namely, the loan of 1881, the loan of 1891, and the four-per-cent. consols of 1907—"shall be exempt from the payment of all taxes or duties of the United States, as well as from taxation in any form by or under State, municipal, or local authority; and the said bonds shall have set forth and expressed upon their face the above specified conditions."

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TREASURY REGULATIONS

GOVERNING THE ISSUE AND REDEMPTION OF THE CURRENCY AND COINS OF THE UNITED STATES, AND THE REDEMPTION OF NATIONAL BANK NOTES.

The following regulations govern the issue and redemption of the currency, and the gold, silver, and minor coins of the United States, and the redemption of National Bank notes by the Treasurer of the United States.*

I.—ISSUE OF UNITED STATES NOTES.

1. The Treasurer will forward new United States notes to Assistant Treasurers of the United States upon their making requisitions, which are to be approved by him, for such denominations as may be needed in the current business of their offices.

2. Upon receiving United States notes unfit for circulation, National Bank notes, fractional silver coin, or minor coin, the Treasurer will forward new United States notes by express, at the expense of the consignee, or by registered mail, free of charge, at the risk of the consignee.

II.—ISSUE OF GOLD COIN.

3. Upon receiving an original certificate of the Assistant Treasurer in New York for a deposit of \$100 or any multiple of \$100, in United States notes, made for the credit of the Treasurer in general account, the Treasurer will cause a like amount in gold coin to be sent from the Mint at Philadelphia, at the consignee's expense.

III.—ISSUE OF STANDARD SILVER DOLLARS.

4. Upon the receipt of currency or gold coin, the Treasurer or an Assistant Treasurer will cause to be paid to applicants, in cities where their respective offices may be situated, standard silver dollars in any desired amount.

5. Standard silver dollars are forwarded to applicants outside of

* These regulations were made by C. N. Jordan, United States Treasurer, July 1, 1885, and approved by the Secretary of the Treasury.

cities in which the Treasurer or an Assistant Treasurer may be situated, at the expense of the Government, in sums or multiples of \$500—

I. Upon the receipt by the Treasurer of an original certificate, issued by any Assistant Treasurer or National Bank depository, that a deposit of currency or gold coin has been made to the credit of the Treasurer in general account. Deposits with the Assistant Treasurer in New York may be made by drafts payable to his order, and collectible through the Clearing-House, forwarded directly to him, with instructions to deposit the amounts on account of standard silver dollars, and to forward the certificates therefor to the Treasurer, upon the receipt by the Treasurer of gold coin, United States notes, silver certificates, or National Bank notes.

II. By the Treasurer or any Assistant Treasurer, by registered mail, free of charge, in sums or multiples of \$65, at the risk of the party to whom sent, upon receipt of gold coin, United States notes, silver certificates, or National Bank notes.

IV.—ISSUE OF FRACTIONAL SILVER COIN.

6. The Treasurer and Assistant Treasurers of the United States will pay out fractional silver coin, in any sum desired, for lawful money of the United States.

7. Fractional silver coin will be forwarded from the office nearest to the place of its destination, by express, at the expense of the Government, in sums or multiples of \$500—

I. Upon receipt of an original certificate issued by the Treasurer, an Assistant Treasurer, or National Bank depository, that a deposit of currency or gold coin has been made to the credit of the Treasurer in general account. Deposits with the Assistant Treasurer in New York may be made by drafts payable to his order, and collectible through the Clearing-House, forwarded directly to him, with instructions to deposit the amounts on account of fractional silver coin, and to forward the certificates to the office nearest the destination of the coin.

II. By the Treasurer or any Assistant Treasurer, by registered mail, free of charge, in sums or multiples of \$70, at the risk of the party to whom sent, upon the receipt of currency or gold coin.

V.—ISSUE OF MINOR COIN.

8. The Treasurer and Assistant Treasurers will pay out, for lawful money, any minor coin not needed in the current business of their offices.

VI.—ISSUE OF THE TREASURER'S TRANSFER CHECKS.

9. The Treasurer will issue transfer checks, in payment for redemptions, on such Assistant Treasurer as may suit the convenience of the Treasury, payable to the order of the sender or his correspondent—

I. For United States notes sent to the Treasurer, with the express charges prepaid at private rates, or by mail, in sums of \$5 or more.

II. For National Bank notes sent to the Treasurer. For notes sent from a city where there is an Assistant Treasurer, checks will be issued only on the Assistant Treasurer in that city.

III. For fractional silver coins sent in multiples of \$20 to the Treasurer, and for minor coin sent the Treasurer or an Assistant Treasurer.

VII.—REDEMPTION OF UNITED STATES NOTES, GOLD CERTIFICATES
(SERIES OF 1882), SILVER CERTIFICATES, AND
FRACTIONAL CURRENCY.

10. United States notes, each exceeding nine-tenths of its original proportions in one piece, are redeemable at their full face value in other United States notes by the Treasurer and the several Assistant Treasurers of the United States, and are redeemable in coin, in sums not less than \$50, by the Assistant Treasurer in New York.

11. Fractional notes, each exceeding four-fifths of its original proportions in one piece, are redeemable at their full face value in United States notes, in sums not less than \$3, by the Treasurer and the several Assistant Treasurers of the United States.

12. Gold certificates, each exceeding nine-tenths of its original proportions in one piece, are redeemable at their full face value by the Treasurer and the several Assistant Treasurers of the United States.

13. Silver certificates, each exceeding nine-tenths of its original proportions in one piece, are redeemable at their full face value in standard silver dollars, by the Treasurer and the several Assistant Treasurers of the United States.

14. United States notes, gold certificates, and silver certificates are redeemable, by the Treasurer only, when mutilated to the extent of one-tenth, but not two-tenths, at nine tenths of their face value; two-tenths, but not three-tenths, at eight-tenths of their face value; three-tenths, but not four-tenths, at seven-tenths of their face value; four-tenths, but not one-half, at six-tenths of their face value. Fragments of notes, each constituting clearly one-half, are redeemable at one-half the full face value of such whole notes.

15. Fractional currency notes are redeemable, by the Treasurer only, when mutilated to the extent of one-fifth, but not two-fifths, at four-fifths of their full face value; two-fifths, but not one-half, at three-fifths of their face value.

16. Fragments less than one-half are redeemed only when accompanied by an affidavit executed in accordance with the requirements of the following paragraph.

17. Notes and Certificates mutilated as described in the preceding paragraphs, accompanied by an affidavit from the owner, or from such other persons as have knowledge of the facts, that the missing portions have been totally destroyed, are, if the proof furnished is satisfactory, redeemed at their full face value. The affidavit must state the cause and manner of the mutilation, and must be sworn and subscribed before an officer qualified to administer oaths, who must affix his official seal thereto, and the character of the affiants must be certified to be good by such officer or some other having an official seal. The Treasurer will exercise such a discretion under this regulation as may seem to him needful to protect the United States from fraud.

18. Fragments not redeemable are rejected and returned; counterfeit notes are branded and returned.

VIII.—REDEMPTION OF NATIONAL BANK NOTES.

19. National Bank notes are redeemable by the Treasurer of the United States, in sums of \$1,000 or any multiple thereof.

20. Notes equaling or exceeding three-fifths of their original proportions, and bearing the name of the bank and the signature of one of its officers, are redeemable at their full face value.

21. Notes of which less than three-fifths remains, or from which both signatures are lacking, are not redeemed by the Treasurer, but should be presented for redemption to the bank of issue. Fragments less than three-fifths are accepted from the bank of issue for face value by the Treasurer, only when accompanied by evidence, as required by paragraph 17, that the missing portions have been entirely destroyed.

22. Fragments redeemed by the bank of issue for less than face value, are accepted by the Treasurer, only when their valuation is equal to the face value of a note of some denomination issued by the bank, or some multiple thereof. The required valuation may be made up of several fragments of notes of the same or different denominations, provided the total valuation of the fragments of each denomination be \$1, or some multiple thereof. Fragments not clearly more than two-fifths are exceptable, only when accompanied by evidence, as required by paragraph 17, that the missing portions have been entirely destroyed.

23. It having been decided that National Bank notes stolen when unsigned, and put in circulation with forged signatures, are not obligatory promissory notes of the banks under section 5182 of the Revised Statutes, they are not redeemed by the Treasurer.

24. Notes of National Banks that have failed, are redeemed in the same manner and on the same terms as United States notes.

IX.—REDEMPTION OF FRACTIONAL SILVER COIN AND MINOR COIN.

25. Fractional silver coin and minor coin may be presented, in

separate packages, in sums or multiples of \$20, assorted by denominations, to the Treasurer or any Assistant Treasurer, for exchange into lawful money.

26. No mutilated coin will be redeemed. Reduction by natural abrasion is not considered mutilation.

X.—TRANSMISSION TO THE TREASURER.

27. The several kinds of paper currency should be forwarded separately. Remittances should be made up into packages of not more than 8,000 notes each. The notes in a package should be assorted by denominations, and inclosed in paper straps containing not more than 100 notes each, and the straps should be marked with the amount of the contents.

28. A letter of advice, giving the amount of each denomination of notes, the total amount in the package, the address of the party sending, and the disposition to be made of the proceeds, should be inclosed with each package, and a copy of the letter sent by mail.

29. The package, if it be sent by express, should be sealed up in stout paper and addressed to the Treasurer of the United States, Washington, D. C. There should be plainly marked on the outside the owner's name and address, the amount and kind of currency inclosed, the disposition to be made of the proceeds, and the statement that the package is forwarded under the Government contract, if such be the case.

30. It is the duty of postmasters to register, free of charge, all letters on which the postage has been fully prepaid, addressed to the Treasurer, containing currency of the United States for redemption. It is recommended that all such letters be registered, as a protection against loss.

31. Remittances of money by mail should be addressed to the Treasurer of the United States, Washington, D. C. Such remittances and returns therefor by mail are invariably at the risk of the owners. All communications to the Treasurer, in regard to packages lost in the mail, are referred for investigation to the Chief Post-Office Inspector, Post-Office Department, Washington, D. C., to whom any subsequent inquiry on the subject should be addressed.

XI.—EXPRESS CHARGES.

EXPRESS CHARGES PAID BY THE GOVERNMENT.

32. Express charges are paid by the Government—

I. On standard silver dollars and fractional silver coin sent from the Mint, the Treasury, or the Sub-Treasuries, in sums or multiples of \$500.

II. On National Bank notes sent to the Treasurer for redemption, in sums or multiples of \$1,000.

EXPRESS CHARGES NOT PAID BY THE GOVERNMENT.

33. On lawful money of the United States sent for redemption or for credit of the five-per-cent. redemption fund, and on National Bank notes sent for redemption in other amounts than multiples of \$1,000, the charges, if not prepaid, are deducted from the proceeds at contract rates.

34. On fractional silver coin and minor coin sent for redemption, the charges must be prepaid by the sender.

35. On United States notes returned for United States notes or National Bank notes redeemed, the charges are deducted at contract rates.

36. On gold coin sent from the Mint on orders from the Treasurer in return for deposits with the Assistant Treasurer in New York, the charges are deducted at contract rates.

37. On transfers of funds from National Bank Depositaries, under letters of instruction, the charges must be paid by the depositaries.

THE GOVERNMENT CONTRACT WITH THE ADAMS EXPRESS COMPANY.

38. The Government contract extends to all points accessible through established express lines, reached by continuous railway communication, but does not embrace sea or river transportation of any kind, and does not extend westward beyond Omaha and Nebraska City, Nebraska, and Atchison and Leavenworth, Kansas.

39. The contract rates for the transportation of United States notes to the Treasurer for redemption, and United States notes sent in return, are 25 cents per \$1,000 to or from points within the territory of the Adams Express Company, and 60 cents per \$1,000 to or from points within the territory of any other express company, except points in Kansas west of Atchison and Leavenworth, in Nebraska west of Omaha and Nebraska City, in Arkansas and Texas, to or from which the rate is 85 cents per \$1,000. When the remittance does not exceed \$500, the rate is half of that for \$1,000.

40. The rates for the transportation of National Bank notes to the Treasurer for redemption are 37½ cents per \$1,000 to each express company over whose lines the remittances pass, and for United States notes sent in return, 25 cents per \$1,000 to points within the territory of the Adams Express Company, and 60 cents per \$1,000 to points within the territory of any other express company except points in Kansas west of Atchison and Leavenworth; in Nebraska, west of Omaha and Nebraska City; in Arkansas and Texas, for which the rate for both classes of shipments is \$1.50 per \$1,000. Sums less than \$1,000 are paid for as \$1,000.

41. The contract rate for the transportation of gold coin is 17-100 of a cent per mile per \$1,000, with a minimum rate of 50 cents per \$1,000 to each express carrying, when the distance at the

prescribed rate does not equal that sum. Parts of \$1,000, not exceeding \$500, are charged half the price for \$1,000, with a minimum rate of 25 cents to each express carrying.

42. The contract rate for the transportation of silver coin is 40-100 of a cent per mile per \$1,000, with a minimum rate of \$1 per \$1,000 to each express carrying, when the distance at the prescribed rate does not equal that sum. Parts of \$1,000, not exceeding \$500, are charged half the price for \$1,000, with a minimum rate of 50 cents to each express carrying.

43. The Treasurer has no control over rates exacted when the charges are prepaid, or when remittances come from points without the limits of the contract.

44. No charge is made for the amount of express charges inclosed with a remittance of even thousands of dollars, when separately noted on the wrapper. Packages should always be marked with the exact amount of the contents.

XII.—GENERAL INFORMATION.

45. Assistant Treasurers elsewhere than in New York are not authorized to receive drafts of banks and bankers under this Circular.

46. The act of June 30, 1876 (19 Statutes, 64), requires "that all United States officers charged with the receipt or disbursement of public moneys, and all officers of National Banks, shall stamp or write in plain letters the word 'counterfeit', 'altered', or 'worthless' upon all fraudulent notes issued in the form of, and intended to circulate as money, which shall be presented at their places of business; and if such officers shall wrongfully stamp any genuine note of the United States, or of the National Banks, they shall, upon presentation, redeem such notes at the face value thereof."

47. When the total amount of dues, in any one payment to the Government, cannot be paid entirely in lawful money of denominations of one dollar or greater, because involving a fractional part of a dollar, such fractional part may be paid in silver coins of denominations of less than one dollar; but when the total amount of such dues does not exceed ten dollars, such total amount may be paid in the silver coins of denominations of less than one dollar.

48. In case of the loss or destruction of one of the Treasurer's checks, and upon application for a duplicate, payment of the original check is stopped, and the applicant is furnished with a form of bond of indemnity, upon return of which, properly executed, a duplicate is issued.

Compliance with the foregoing regulations is enjoined on all officers of the Department, and observance of them will be expected of all making remittances to this office.

FAC-SIMILE OF DISCOUNT GLASS USED AT THE NATIONAL BANK REDEMPTION AGENCY FOR DISCOUNTING
NATIONAL BANK NOTES.

Notes equaling or exceeding three-fifths of their original proportions, and bearing the name of the bank and the signature of one of its officers, are redeemable at their full face value. For further particulars see Sec. 21 *et seq.* of Treasury Circular preceding.



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